

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE YVONNE GONZALEZ ROGERS, JUDGE

CIARA NEWTON,)	
)	
PLAINTIFF,)	NO. C-17-3961 YGR
)	
VS.)	TUESDAY, DECEMBER 11, 2018
)	
EQUILON ENTERPRISES LLC DBA)	OAKLAND, CALIFORNIA
SHELL OIL PRODUCTS ,)	
)	
)	JURY TRIAL
)	
DEFENDANT.)	
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFF: MINNIS & SMALLETS LLP
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EVEN R. ETTHINGHOFF, ESQUIRE

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BY: EMILY A. NUGENT, ESQUIRE

FOR DEFENDANT: LAFAYETTE & KUMAGAI LLP
1300 CLAY STREET, SUITE 810
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BY: GARY T. LAFAYETTE, ESQUIRE
BARBARA L. LYONS, ESQUIRE

REPORTED BY: DIANE E. SKILLMAN, CSR 4909, RPR, FCRR
OFFICIAL COURT REPORTER

TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

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1	<u>PLAINTIFF'S EXHIBITS:</u>	<u>WITHDRAWN</u>	<u>ID.</u>	<u>EVD.</u>	<u>VOL.</u>
2	3			388	2
3	4			395	2
4	19			234	2
5	21			248	2
6	38			249	2
7	40			258	2
8	49			331	2
9	70A		320	321	2
10	83			272	2
11	85			236	2
12	86			301	2
13	97			242	2
14	99			253	2
15	109			243	2
16	121			245	2
17	<u>DEFENDANT'S EXHIBITS:</u>	<u>WITHDRAWN</u>	<u>ID.</u>	<u>EVD.</u>	<u>VOL.</u>
18	546			345	2
19	547			408	2
20	556			347	2
21	558A			409	2
22	561A			409	2
23	563A			409	2
24	566A			409	2
25	573			355	2

<u>DEFENDANT'S EXHIBITS:</u>	<u>WITHDRAWN</u>	<u>ID.</u>	<u>EVD.</u>	<u>VOL.</u>
577			364	2
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594			368	2
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TUESDAY, DECEMBER 11, 2018

8:00 A.M.

P R O C E E D I N G S

THE CLERK: REMAIN SEATED. COURT IS IN SESSION.
COME TO ORDER.

THE COURT: GOOD MORNING, EVERYONE.

MS. NUGENT: GOOD MORNING.

THE COURT: LET'S GO ON THE RECORD.

THE CLERK: CIVIL ACTION 17-3961 NEWTON VERSUS
EQUILON. COUNSEL, PLEASE STATE YOUR APPEARANCES. PLEASE COME
FORWARD AND STATE YOUR APPEARANCES.

MS. SMALLETS: SONYA SMALLETS FOR THE PLAINTIFF CIARA
NEWTON AND WITH ME IS EVAN ETTINGHOFF.

THE COURT: GOOD MORNING.

MR. LAFAYETTE: GARY LAFAYETTE FOR DEFENDANT EQUILON.

THE COURT: GOOD MORNING? ISSUES? PLAINTIFF?

MS. SMALLETS: NONE, YOUR HONOR.

MR. LAFAYETTE: THERE IS AN ISSUE THAT MAY COME UP
TODAY THE PLAINTIFF ALERTED ME TO.

IT HAS TO DO WITH EVIDENCE WITH REGARD TO COMPARATORS.
PLAINTIFF IN THIS CASE IS A NONUNION EMPLOYEE ON PROBATION.
PLAINTIFFS HAVE ALERTED ME THEY ARE GOING TO TRY TO INTRODUCE
EVIDENCE TODAY OF INDIVIDUALS COVERED BY THE COLLECTIVE
BARGAINING AGREEMENT, WHO HAVE BEEN THERE FOR SOME TIME, WHO
ARE NOT COMPARATORS OF PLAINTIFF.

THE COURT: I DON'T UNDERSTAND THAT BECAUSE NO ONE IS

1 SUBJECT UNDER THE LAW TO DISCRIMINATION AND HARASSMENT, UNION
2 OR NOT UNION. SO WHAT IS THE ISSUE?

3 **MR. LAFAYETTE:** THE ISSUE IS THIS: THE CASES THAT WE
4 WILL CITE TO YOU BASICALLY SAY IF PLAINTIFF IS TRYING TO SHOW
5 THAT SHE RECEIVED DISPARATE TREATMENT, SHE HAS TO COMPARE
6 HERSELF TO PEOPLE WHO ARE IN HER CLASSIFICATION, WHO ARE
7 COMPARATORS OF HERS. THAT'S THE LAW, YOUR HONOR. THAT IS
8 WHAT I AM CITING.

9 **THE COURT:** YES, THAT IS THE LAW. EVERYBODY IS
10 ENTITLED TO A HARASSMENT-FREE WORK PLACE. YOU'RE SAYING THAT
11 NON UNION PEOPLE CAN BE HARASSED AND UNION PEOPLE CANNOT BE?

12 **MR. LAFAYETTE:** I'M NOT SPEAKING TO THE HARASSMENT
13 ISSUE, YOUR HONOR.

14 **THE COURT:** WHAT IS THEN THE FUNDAMENTAL FACTUAL
15 ISSUE THAT WE'RE DEALING WITH?

16 **MR. LAFAYETTE:** IT'S THE DISCRIMINATION CLAIM. THEY
17 INTEND TO PRESENT EVIDENCE OF INDIVIDUALS WHO WERE TERMINATED,
18 WHO WERE UNION EMPLOYEES AND THEY ARE GOING -- GOING TRY TO
19 ARGUE THAT THE PLAINTIFF WAS TREATED DIFFERENTLY THAN THOSE --

20 **THE COURT:** ON WHAT BASIS WERE THEY TERMINATED?

21 **MR. LAFAYETTE:** A WHOLE HOST OF THINGS.

22 **THE COURT:** I NEED SPECIFICS.

23 **MR. LAFAYETTE:** SOME WERE TERMINATED FOR
24 FALSIFICATION OF RECORDS.

25 **THE COURT:** ALL RIGHT. LET ME HAVE THE NAME. WHO IS

1 BEING CALLED AND WHO IS AND WHAT IS THE CONCERN?

2 **MR. LAFAYETTE:** YOUR HONOR, ALL I KNOW --

3 **THE COURT:** PERSON BY PERSON. OTHERWISE, I CAN'T
4 DEAL WITH OBJECTIONS AT THE TIME. WHO IS BEING CALLED?

5 **MS. SMALLETS:** IT IS NOT WHO IS BEING CALLED, YOUR
6 HONOR. WE INTEND TODAY TO ELICIT TESTIMONY FROM MR. CAMERON
7 INVOLVING A TERMINATION HE WITNESSED WHERE AN EMPLOYEE WAS
8 TERMINATED FOR VIOLATING LIFE-SAVING RULES. HE'S NOT AWARE OF
9 ANY OTHER EMPLOYEE BEING TERMINATED IN OPCEN. SO IT'S A
10 COMPARISON.

11 **THE COURT:** WHO IS IT?

12 **MS. SMALLETS:** HIS NAME IS WILLIE. FOR PURPOSES OF
13 PROTECTING THE CONFIDENTIALITY OF THE WITNESS, I DON'T KNOW
14 HIS LAST NAME. BUT MR. CURRAN PERSONALLY WAS PRESENT AND
15 WITNESSED THE INCIDENTS THAT LED TO THE TERMINATION.

16 **THE COURT:** WAS HE INVOLVED IN THE TERMINATION?

17 **MS. SMALLETS:** HE WAS PRESENT WHEN WILLIE DID THE
18 CONDUCT THAT LED TO THE TERMINATION AND THEN WAS AWARE --

19 **THE COURT:** DOES HE HAVE PERSONAL KNOWLEDGE OF THE
20 TERMINATION?

21 **MS. SMALLETS:** HE HAS PERSONAL THAT WILLIE NEVER CAME
22 BACK TO WORK -- WAS NEVER BACK AT THE REFINERY THE DAY AFTER
23 THE INCIDENT HAPPENED.

24 **THE COURT:** WHY HAVEN'T YOU CALLED THE PERSON WHO
25 ACTUALLY HAS KNOWLEDGE OF THE TERMINATION IF THAT'S WHAT IN

1 FACT YOU WANT TO GET INTO EVIDENCE?

2 **MS. SMALLETS:** TIME LIMITS, YOUR HONOR. WE HAVE --
3 MR. CURRAN HAS PERSONAL KNOWLEDGE WHAT HAPPENED. THE INCIDENT
4 IS WHAT --

5 **THE COURT:** HE HAS NO KNOWLEDGE OF WHY THE PERSON
6 ULTIMATELY WAS TERMINATED, HAS NO INFORMATION, RIGHT OF THE
7 TERMINATION ITSELF. THESE THINGS JUST DON'T HAPPEN,
8 ESPECIALLY FOR UNION EMPLOYEES.

9 **MS. SMALLETS:** SO MR. CURRAN HAS PERSONAL KNOWLEDGE
10 THAT HE SAW THE INCIDENT DON'T TOOK PLACE. HE WAS THERE. HE
11 CAN DESCRIBE WHAT HAPPENED, AND HE CAN TESTIFY THAT AFTER THAT
12 HE NEVER SAW THIS PERSON IN THE REFINERY AGAIN. THEY COULD
13 ARGUE HE WASN'T TERMINATED, BUT I THINK THERE IS AN INFERENCE
14 CERTAINLY THAT COULD BE DRAWN THAT THAT'S THE REASON FOR THE
15 PERSON'S TERMINATION.

16 **THE COURT:** WHY DO YOU NEED THIS EVIDENCE?

17 **MS. SMALLETS:** BECAUSE THEY ARE ARGUING THAT MY
18 CLIENT WAS TERMINATED FOR POOR PERFORMANCE. AND SO THIS
19 CREATES -- IT IS AN EVIDENTIARY RECORD OF WHAT TYPES OF THINGS
20 THEY IN FACT TERMINATE MEN FOR. AND WHAT HE DID IN COMPARISON
21 TO WHAT SHE DID IS EXTREMELY DIFFERENT.

22 **THE COURT:** WELL, WHAT WAS IT? I WANT FACTS.

23 **MS. SMALLETS:** OH, SURE. HE STUCK HIS HEAD UP UNDER
24 THE SKIRT OF A VESSEL WHEN HE KNEW THERE WERE FLAMMABLE GASES
25 PRESENT. SO, THERE'S A VESSEL THAT HAS AN UNDERSIDE. HE

1 PLACED -- HE TOOK A READING. HE FOUND OUT THAT THERE WERE
2 FLAMMABLE GASES UNDER THIS VESSEL. HE PLACED HIS HEAD UNDER
3 IT --

4 **THE COURT:** YEAH.

5 **MS. SMALLETS:** -- WHICH PLACING HIS HEAD IN AN AREA
6 WHERE THERE WERE ALREADY FOUND TO BE FLAMMABLE GASES. THEY
7 TOLD HIM NOT TO DO IT AND HE DID IT AGAIN.

8 **THE COURT:** BEFORE OR AFTER?

9 **MS. SMALLETS:** BEFORE OR AFTER WHAT? I'M SORRY.

10 **THE COURT:** THEY TOLD HIM NOT TO DO IT BEFORE OR
11 AFTER?

12 **MS. SMALLETS:** THEY SAID DON'T DO THIS, AND HE DID IT
13 AGAIN.

14 **THE COURT:** HE WAS A PROBATIONARY EMPLOYEE?

15 **MS. SMALLETS:** HE WAS NOT A PROBATIONARY EMPLOYEE.
16 HE HAD BEEN WITH THE UNION -- HE HAD BEEN THERE FOR A WHILE.

17 **THE COURT:** SO YOU DON'T KNOW WHAT HIS RECORD WAS?

18 **MS. SMALLETS:** WHAT WE ARE SAYING IS THAT INCIDENT IN
19 AND OF ITSELF, HE WAS OUT OF THE REFINERY THE NEXT DAY.

20 **THE COURT:** BUT YOU DON'T KNOW THAT.

21 **MS. SMALLETS:** WE KNOW HE WAS OUT OF THE REFINERY THE
22 NEXT DAY.

23 **THE COURT:** DO YOU KNOW WHETHER HE HAD HAD OTHER
24 INCIDENTS AND THIS WAS THE -- YOU KNOW, THE STRAW THAT BROKE
25 THE CAMEL'S BACK?

1 **MS. SMALLETS:** I DON'T, BUT I CAN CERTAINLY ASK THAT
2 OF MR. CURRAN.

3 **THE COURT:** HOW WOULD HE KNOW?

4 **MS. SMALLETS:** HE WAS WORKING THE SAME UNIT AT THE
5 TIME.

6 **THE COURT:** WAS HE HIS SUPERVISOR? HOW WOULD HE
7 KNOW?

8 **MS. SMALLETS:** HE WAS NOT HIS SUPERVISOR AT THAT
9 POINT IN TIME. BUT HE WAS AN OPERATOR IN THAT UNIT AND HE --
10 AGAIN, HE PERSONALLY WITNESSED THE INCIDENT AND HE PERSONALLY
11 WITNESSED MR. CURRAN NOT COMING TO WORK THE NEXT DAY.

12 **THE COURT:** WHAT ELSE IS THERE?

13 **MS. SMALLETS:** THERE IS A SECOND INCIDENT THAT
14 MR. CURRAN TESTIFIED TO OR SECOND EMPLOYEE DURING THE TIME
15 THAT HE WAS --

16 **THE COURT:** IS THIS IN HIS DEPOSITION?

17 **MS. SMALLETS:** YES.

18 **THE COURT:** WHAT ARE THE PAGES? CAN I HAVE HIS
19 DEPOSITION, PLEASE?

20 **MS. SMALLETS:** IT'S FROM 51:11 TO 57:22, I THINK, BUT
21 CERTAINLY 51:11 TO 57:22.

22 **THE COURT:** WHO ELSE?

23 **MS. SMALLETS:** DURING THE TIME THAT MR. CURRAN WAS
24 SUPERVISING MS. NEWTON AND SHE WAS REPORTING UNEQUAL
25 TREATMENT, MR. PEREZ WROTE TO MR. CURRAN AND SAID WE'RE

1 TREATING HER EQUALLY, WE'RE TREATING HER JUST LIKE WE'RE
2 TREATING JOHN HESS, WHO IS A MEMBER OF THE UNION AND HAS BEEN
3 THERE A WHILE. BUT MR. HESS ENGAGED IN SEVERAL ACTS --
4 SEVERAL EXAMPLES OF POOR PERFORMANCE. MR. CURRAN, WHO WAS HIS
5 SUPERVISOR AT THE TIME, TESTIFIED AS TO WHAT THEY WERE.
6 MR. HESS IS STILL AN EMPLOYEE OF THE UNION, AND SOME OF THOSE
7 INDENTS INCLUDE OPENING THE WRONG VALVE THAT LED TO A
8 SIGNIFICANT PLANT UPSET.

9 SO IT'S VERY SIMILAR -- SORRY -- AND ONE OF THE THINGS
10 THEY ARE SAYING MS. NEWTON DID WRONG TODAY -- SORRY -- IN THIS
11 CASE IS SHE OPENED THE WRONG VALVE.

12 HE ALSO ISSUED A PERMIT THAT SHOULDN'T HAVE BEEN ISSUED,
13 WHICH LED TO PROBLEMS. THAT'S ANOTHER THING SHE'S SAYING THEY
14 ARE DOING -- THEY'RE SAYING SHE'S DOING. AND THERE WAS -- HE
15 ALSO -- HE FAILED TO PROPERLY PREPARE EQUIPMENT FOR WORK TO BE
16 DONE THAT CAUSED A WORK SHUTDOWN AND HE IS STILL EMPLOYED.

17 **THE COURT:** AND HE WAS COMPARED DIRECTLY TO MISS --
18 TO MS. NEWTON?

19 **MS. SMALLETS:** BY MR. PEREZ.

20 **THE COURT:** ALL RIGHT. THAT ONE CAN COME IN.

21 **MR. LAFAYETTE:** CAN I JUST SPEAK TO THAT, YOUR HONOR?

22 **THE COURT:** BRIEFLY.

23 **MR. LAFAYETTE:** WE BRIEFED THIS BEFORE TO YOU WHEN WE
24 WERE GOING THROUGH DISCOVERY. AND IN THAT -- IN THE BRIEFS
25 THAT WE SUBMITTED TO YOU, WE ARGUED THAT THEY SHOULD NOT BE

1 ALLOWED TO CONDUCT DISCOVERY AGAINST UNION EMPLOYEES FOR
2 COMPARATORS ON THE DISCRIMINATION CASE BECAUSE THEY ARE NOT
3 THE SAME. THEY ARE PROTECTED BY A COLLECTIVE BARGAINING
4 AGREEMENT, AND WE CAN ONLY TERMINATE THEM FOR CAUSE UNDER THE
5 COLLECTIVE BARGAINING AGREEMENT.

6 SHE IS AN AT-WILL EMPLOYEE AND A PROBATIONARY EMPLOYEE.
7 THAT PLACES THEM OUTSIDE THE COMPARATOR STATUS. AND THAT'S
8 OUR CONCERN.

9 IN THE DISCOVERY MOTION, YOU LIMITED THEIR DISCOVERY TO
10 THOSE INDIVIDUALS WHO WERE PROBATIONARY EMPLOYEES, AND WE
11 PROVIDED AND PRODUCED ALL OF THE DOCUMENTATION RELATING TO ALL
12 OF THE PROBATIONARY EMPLOYEES. THESE ARE NOT PROBATIONARY
13 EMPLOYEES. THEY ARE SUBSTANTIALLY DIFFERENT. AND WE HAVE TO
14 DEAL WITH THEM DIFFERENTLY.

15 **THE COURT:** THE FACT THAT HE COMPARED -- THE REASON
16 IT'S COMING IN IN PART IS BECAUSE HE WAS COMPARED AT --
17 CONTEMPORANEOUSLY BY ONE OF YOUR KEY WITNESSES. SO YOUR
18 WITNESS CAN EXPLAIN THAT. HE CAN EXPLAIN, ONE, WHY HE
19 COMPARED HER AND, TWO, WHY IT MAY NOT AT THIS POINT IN TIME,
20 ONCE WE ARE IN TRIAL, MR. PEREZ CAN SAY WHY IT IS NOT A FAIR
21 COMPARISON. IT IS NOT CLEAR TO ME THAT THE INCIDENT WITH
22 RESPECT TO WILLIE COMES IN. I WILL READ THE DEPOSITION
23 TRANSCRIPT.

24 **MR. LAFAYETTE:** THE ONE THAT IS COMING IN IS THE
25 HESS?

1 **MS. SMALLETS:** HESS, YES.

2 **MR. LAFAYETTE:** AND HE --

3 **THE COURT:** CAN I HAVE THE EMAIL THAT PEREZ SENT?

4 **MS. SMALLETS:** SURE. IT IS EXHIBIT 26.

5 **MR. LAFAYETTE:** OKAY. WHICH EXHIBIT NUMBER DID YOU
6 CALL?

7 **MS. SMALLETS:** 26.

8 **MR. LAFAYETTE:** IS THIS THE JULY 25 EMAIL, MA'AM?

9 **MS. SMALLETS:** YES. AND THE EMAIL FROM CAMERON TO
10 ERIC, WHICH IS ON THE BOTTOM PART --

11 **THE COURT:** WAS THERE AN ISSUE WITH TARDIES WITH
12 HESS?

13 **MS. SMALLETS:** I DON'T BELIEVE SO. BUT THE
14 PERFORMANCE ISSUES THAT WERE IDENTIFIED WERE THE COMPETENCE
15 ISSUES IDENTIFIED WERE VERY SIMILAR. HE WAS -- ONE OF THE
16 THINGS HE DID WRONG THAT LED TO HIS WRITTEN PERFORMANCE
17 REVIEW -- WARNING WAS HE OPENED THE WRONG VALVE. THAT IS ONE
18 OF THE THINGS THAT THEY ARE SAYING THAT MS. NEWTON DID WRONG
19 IN THIS CASE.

20 **THE COURT:** THE JURY IS ENTITLED TO UNDERSTAND THE
21 CONTEXT OF THIS EMAIL BY MR. PEREZ WITH RESPECT TO MS. NEWTON.
22 THE HESS INFORMATION COMES IN.

23 **MR. LAFAYETTE:** THE -- I UNDERSTAND THAT, YOUR HONOR.
24 I AM GOING TO POINT OUT ONE LAST THING. THAT IS EXHIBIT 500,
25 WHICH IS THE POSITIVE DISCIPLINE POLICY AND THE POSITIVE --

1 **THE COURT:** DO I HAVE THAT?

2 **MR. LAFAYETTE:** IT IS IN THE EXHIBIT BINDERS, YOUR
3 HONOR. DEFENDANT'S FIRST EXHIBIT. IF YOU TAKE A LOOK AT
4 BATES STAMP PAGE 152, YOU WILL SEE THAT PROBATIONARY EMPLOYEES
5 ARE TREATED DIFFERENTLY THAN UNION EMPLOYEES UNDER THE
6 PROGRESSIVE DISCIPLINE POLICY.

7 **THE COURT:** RIGHT. SO EXPLAIN THAT TO THE JURY.
8 THEY ARE SMART.

9 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

10 ONE LAST THING YOUR HONOR. I HAVE INJURED MY KNEE. IT IS
11 EXTREMELY PAINFUL. I WILL BE A LITTLE -- DIFFICULT WALKING
12 TODAY AND I JUST WANT YOU TO KNOW THAT I AM NOT TRYING TO DO
13 ANYTHING, BUT IT IS EXTREMELY PAINFUL. OKAY?

14 **THE COURT:** ALL RIGHT.

15 I WILL READ THESE PAGES WITH RESPECT TO THE WILLIE
16 INCIDENT, BUT IT DOESN'T SEEM LIKE A PROPER COMPARISON.

17 I AM GOING THROUGH THE JURY INSTRUCTIONS FOR THE END, AND
18 I SHOULD HAVE A DRAFT TO YOU TOMORROW FOR TALKING PURPOSES FOR
19 US TO DISCUSS ON THURSDAY.

20 I AM CURIOUS ABOUT YOUR APPROACHES WITH THE VERDICT FORMS,
21 WHICH I FIND TO BE INCREDIBLY ONEROUS. AND I WOULD LIKE TO
22 KNOW WHY YOU EACH TOOK THE APPROACH THAT YOU DID WITH RESPECT
23 TO THOSE FORMS.

24 **MS. SMALLETS:** YOUR HONOR --

25 **THE COURT:** DO WE REALLY NEED TO ASK THEM AS MANY

1 QUESTIONS AS YOU'RE WANTING TO ASK THEM?

2 **MS. SMALLETS:** YOUR HONOR, WE CERTAINLY WOULD BE
3 HAPPY TO REDUCE THE NUMBER OF QUESTIONS. WE WOULD HAVE NO
4 OBJECTION TO THAT.

5 **THE COURT:** MR. LAFAYETTE, FOR THESE PURPOSES IF YOU
6 WANT TO STAY AT YOUR CHAIR YOU CAN.

7 **MR. LAFAYETTE:** THANK YOU.

8 **THE CLERK:** I'LL TURN ON THE MIC.

9 **THE COURT:** I THINK THESE VERDICT FORMS ARE LIKE 25
10 PAGES LONG.

11 **MS. LYONS:** GOOD MORNING, YOUR HONOR. BARBARA LYONS.
12 I AM ADDRESSING THE VERDICT FORMS BECAUSE I AM THE PERSON IN
13 THE OFFICE WHO PUT THEM TOGETHER. WE MODELED THE CACI FORMS
14 FIRST OF ALL AFTER INSTRUCTIONS THAT MR. LAFAYETTE HAS
15 RECENTLY USED IN ANOTHER CASE.

16 **THE COURT:** WAS IT FEDERAL?

17 **MS. LYONS:** I BELIEVE IT WAS.

18 **MR. LAFAYETTE:** YES. BEFORE MAGISTRATE CORLEY, YOUR
19 HONOR.

20 **MS. LYONS:** THE OTHER ASPECT OF THE VERDICT FORMS IS
21 THAT THEY CLOSELY TRACK THE ELEMENTS OF EACH OF THE SEVERAL
22 CAUSES OF ACTION.

23 **THE COURT:** I UNDERSTAND THEY TRACK THE ELEMENTS.
24 AND YOU WILL SEE WHEN I HAVE REDONE THESE INSTRUCTIONS TO MAKE
25 THEM MORE ACCESSIBLE TO THE JURY. THE JURY IS GOING TO KNOW

1 EXACTLY WHAT THEY HAVE TO FIND FOR EACH AND EVERY COUNT AT
2 ISSUE.

3 WHY DO THEY HAVE TO ANSWER A QUESTION FOR EACH AND EVERY
4 ELEMENT? IS THERE SOMETHING YOU NEED TO KNOW SPECIFICALLY
5 ABOUT A SPECIFIC ELEMENT? IF NOT, I'M GOING TO HAVE THEM
6 ANSWER THE QUESTIONS RELATIVE TO THE COUNTS, NOT TO EVERY
7 SPECIFIC ELEMENT.

8 **MS. LYONS:** OUR PREFERENCE IS THE CACI FORM VERDICT
9 FORM WHICH IS WHAT THESE ARE MODELED AFTER.

10 **THE COURT:** LOOK AT PAGE 14 OF YOUR VERDICT FORM.
11 THIS IS YOUR SPECIAL VERDICT FORM AT PAGE 14 OF 29. DOCKET
12 178. TELL ME PAGE BY PAGE WHAT YOU MUST KNOW AND WHAT THE
13 PURPOSE IS BECAUSE I AM NOT GOING TO DO IT THIS WAY, UNLESS
14 THERE IS A SPECIFIC REASON.

15 **MS. LYONS:** YOUR HONOR, AT THIS MOMENT I DON'T HAVE
16 IT IN FRONT OF ME. MY COMPUTER IS MISBEHAVING THIS MORNING.

17 **THE COURT:** ALL RIGHT. FRANCES, DOCKET 178.

18 **THE CLERK:** OKAY.

19 **MS. LYONS:** IN THIS CASE, YOUR HONOR, THERE ARE A
20 COUPLE OF PRIMARY ISSUES FOR US. FIRST OF ALL, WITH RESPECT
21 TO VICARIOUS LIABILITY ON A SEXUAL HARASSMENT CLAIM, THERE'S
22 AN IMPORTANT -- WHERE THERE ARE MULTIPLE ALLEGED INDIVIDUALS
23 INVOLVED IN HARASSING THE PLAINTIFF, THAT THE JURY CLEARLY
24 DECIDE WHETHER EACH ALLEGED PERPETRATOR IS A SUPERVISOR
25 BECAUSE IT'S THE DIFFERENCE BETWEEN STRICT LIABILITY AND THE

1 NEGLIGENCE STANDARD, THE KNEW OR SHOULD HAVE KNOWN STANDARD
2 APPLICABLE OTHERWISE.

3 OUR OTHER PRIMARY CONCERN IS ON PUNITIVE DAMAGES. AND
4 WHERE THEY CAN BE A POOR SURROGATE FOR -- IT IS IMPORTANT
5 THERE AGAIN THAT THE --

6 **THE COURT:** I UNDERSTAND IT ON THE PUNITIVE DAMAGES.
7 I UNDERSTAND, BASED UPON YOUR INSTRUCTIONS, YOUR CONCERNS WITH
8 RESPECT TO THE SUPERVISOR. THAT DOESN'T JUSTIFY THE APPROACH
9 TAKEN WITH EVERY OTHER SINGLE CAUSE OF ACTION. IS THERE ANY
10 OTHER CONCERN? IF NOT, I WILL GOING TO ADDRESS THOSE TWO
11 CONCERNS.

12 **MS. LYONS:** IF YOU WILL REMIND ME OF WHAT INSTRUCTION
13 YOU ARE ADDRESSING ON PAGE 14 --

14 **THE COURT:** EVERY ELEMENT YOU ARE ASKING FOR THEM TO
15 ANSWER AS TO EACH ELEMENT. IT'S ONEROUS AND BURDENSOME AND
16 UNNECESSARY.

17 **MR. LAFAYETTE:** I THINK, YOUR HONOR, YOU REFERENCED
18 178. AND I'M SHOWING THAT THERE WERE REVISED INSTRUCTIONS AT
19 196, DOCKET NUMBER 196.

20 **THE COURT:** THE REVISED VERDICT FORMS?

21 **MR. LAFAYETTE:** YES, YOUR HONOR. AT DOCKET NUMBER
22 196 ON NOVEMBER 28TH, 2018.

23 **MS. SMALLETS:** WE HAD NOTICED IN THE INTERIM TYPO OR
24 TWO. WE CORRECTED OURS. I DON'T KNOW WHAT CHANGED ON THEIRS.
25 WE CORRECTED A TYPO OR TWO AND FLIPPED ONE QUESTION.

1 **THE COURT:** ALL I WANT TO KNOW IS WHAT YOUR CONCERNS
2 ARE BECAUSE I AM REDOING THEM. THEY ARE NOT ACCEPTABLE AS
3 PROVIDED.

4 **MR. LAFAYETTE:** WE CAN -- WE MAY NOT NEED ALL OF THE
5 ELEMENTS, YOUR HONOR.

6 **THE COURT:** ALL I WANT TO KNOW IS WHAT YOUR CONCERN
7 IS, SO THAT I CAN TRY TO ADDRESS IT MYSELF.

8 **MR. LAFAYETTE:** CAN WE LOOK AT THAT TODAY AND LET YOU
9 KNOW AT THE CLOSE OF TODAY?

10 **THE COURT:** YOU CAN.

11 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

12 **THE COURT:** SO, THE OTHER ISSUE WITH RESPECT TO, AND
13 I THINK I MENTIONED THIS BEFORE, THE MANNER IN WHICH YOU
14 PROFFERED THE VERDICT FORMS IN THE INSTRUCTIONS DID NOT
15 ADDRESS OR ACCOUNT FOR MY APPROACH.

16 SO THE WAY THAT I DO IT IS THAT THE JURY WILL BE
17 INSTRUCTED ON EACH OF THE CLAIMS AND DAMAGES FOR EACH OF THE
18 UNDERLYING CLAIMS. IF THE PLAINTIFF SUCCEEDS, THEN YOU WILL
19 BE ALLOWED ADDITIONAL ARGUMENT AND THE JURY WILL BE ASKED TO
20 FIND WHETHER THERE IS LIABILITY FOR PUNITIVES. IF THEY
21 SUCCEED ON THAT QUESTION, THEN YOU WILL BE ALLOWED TO PRESENT
22 EVIDENCE AND/OR ARGUMENT WITH RESPECT TO PUNITIVES AND THE
23 JURY WILL BE SENT BACK A THIRD TIME TO DEAL WITH THE
24 PUNITIVES, DAMAGES.

25 SO IT IS EFFECTIVELY TRIFURCATED. WE NEVER GET TO THE

1 PUNITIVES UNLESS I KNOW I HAVE A FINDING OF LIABILITY. AND
2 THEN I CAN ADDRESS MORE SPECIFICALLY THE ISSUES RELATIVE TO
3 THE PERSONS WHO WERE GIVING RISE TO PUNITIVE DAMAGES
4 LIABILITY. I DON'T WANT TO CONFUSE THEM. THE BURDENS ARE
5 POTENTIALLY DIFFERENT. I HAVE TO GO BACK AND DOUBLE-CHECK.
6 THE PEOPLE ARE DIFFERENT. I WOULD LIKE THEM TO JUST DECIDE
7 THE LIABILITY PHASE FIRST BEFORE GIVING THEM THE PUNITIVES
8 QUESTION.

9 **MR. LAFAYETTE:** I THINK I UNDERSTAND, YOUR HONOR. I
10 THINK YOU'RE SAYING THE PUNITIVE DAMAGES INSTRUCTIONS AND THE
11 VERDICT FORM ON THE PUNITIVE DAMAGES, EVEN THE QUESTION OF
12 WHETHER OR NOT THEY FIND PUNITIVE DAMAGES, FALLS AFTER THE
13 FINDING OF LIABILITY IN THE FIRST INSTANCE.

14 **THE COURT:** CORRECT. AND IT IS PRETTY QUICK TURN
15 AROUND THE LAST TIME I DID THAT WAY. IT WAS PRETTY QUICK.

16 **MR. LAFAYETTE:** OKAY.

17 **THE COURT:** SO YOU WILL GET ADDITIONAL ARGUMENT.
18 THAT IS ON ME, THAT IS NOT ON YOUR TIME BECAUSE IT IS NOT THAT
19 MUCH ARGUMENT.

20 **MR. LAFAYETTE:** I THINK I UNDERSTAND, YOUR HONOR.

21 **THE COURT:** AND THEN -- AND THEN THEY GO BACK AND
22 FOCUS SOLELY ON THAT CONDUCT AND WHETHER IT RISES TO THE LEVEL
23 OF PUNITIVE CONDUCT.

24 AND THEN ONLY IF THEY FIND THAT, THEN WE'LL OPEN UP THE
25 FINANCIAL INFORMATION, EVIDENCE CAN BE PRESENTED, FURTHER

1 ARGUMENT CAN BE MADE ON THE PUNITIVE DAMAGES PIECE.

2 **MR. LAFAYETTE:** I UNDERSTAND, YOUR HONOR.

3 **THE COURT:** ALL RIGHT.

4 **MS. SMALLETS:** THANK YOU, YOUR HONOR.

5 (PAUSE IN THE PROCEEDINGS.)

6 **THE COURT:** MR. LAFAYETTE, IS MR. CURRAN COMING IN
7 DURING YOUR CASE-IN-CHIEF?

8 **MR. LAFAYETTE:** HE IS, YOUR HONOR. IT MAY WELL BE
9 THAT THEY COVER EVERYTHING IN THEIR DIRECT AND, IF THEY DO,
10 THEN I WILL CROSS HIM AT THAT POINT IN TIME ON THOSE ITEMS.

11 **THE COURT:** OKAY. WITH RESPECT TO THE INCIDENT WITH
12 WILLIE, IT CANNOT COME IN IN YOUR CASE-IN-CHIEF. I WILL
13 RE-EVALUATE IF SOMETHING CHANGES IN TERMS OF THEIR CASE. AND,
14 DEFENSE, IF IT'S APPROPRIATE, I MAY ALLOW IT FOR REBUTTAL
15 PURPOSES.

16 IS THE JURY HERE?

17 **THE CLERK:** YES.

18 **THE COURT:** ALL RIGHT. THE JURY IS HERE. LET'S GET
19 GOING.

20 WHAT'S THE ORDER TODAY?

21 **MS. NUGENT:** MIKE JOYCE, CAMERON CURRAN, AND
22 CHRISTINE LAYNE.

23 (PROCEEDINGS HELD IN THE PRESENCE OF THE JURY.)

24 **THE COURT:** OKAY. GOOD MORNING. YOU MAY ALL BE
25 SEATED. THE RECORD REFLECT THE JURY IS NOW WITH US.

1 HOW IS EVERYBODY THIS MORNING? IT'S ALL WORKING OKAY?
2 YEAH? IT'S NOT SO BAD FOR ME YET. MY DAUGHTER SAYS YOU KNOW
3 IT'S BAD WHEN YOU FIND MOM'S CELL PHONE IN THE RECYCLING BIN.
4 THAT HAPPENS DURING TRIAL.

5 THE OTHER ONE IS WHEN I'M SO FOCUSED ON GETTING EVERYTHING
6 DONE, THAT I GO INTO THE PARKING LOT -- WE ALL HAVE OUR
7 SPACES, THE JUDGE'S PARKING LOT -- AND I HAVE TO BACK IN. AND
8 I LOOK IN MY REARVIEW MIRROR AND THERE'S MY DOG LOOKING AT ME
9 LIKE, DAY CARE?

10 ANYHOW, BACK OUT OF THE GARAGE. SO FAR, SO GOOD. NONE OF
11 THAT'S HAPPENED, SO I KNOW IT'S A GOOD DAY.

12 ALL RIGHT. WE WILL HAVE MORE EVIDENCE FOR YOU TODAY, MORE
13 LIVE WITNESSES.

14 I SAY THAT, IN PART, BECAUSE MY LAST TRIAL WE HAD A NUMBER
15 OF DAYS WHERE THE WITNESSES WEREN'T IN OUR JURISDICTION, SO IT
16 WAS JUST THE READING OF DEPOSITION TRANSCRIPTS BACK AND FORTH.
17 MUCH LESS INTERESTING BUT SO FAR, SO GOOD. ALL LIVE
18 WITNESSES.

19 NEXT WITNESS, PLEASE.

20 **MR. ETTINGHOFF:** WE WOULD LIKE TO CALL MICHAEL JOYCE.

21 **THE COURT:** ALL RIGHT. MR. ETTINGHOFF.

22 **THE CLERK:** UP HERE.

23 **(MICHAEL JOYCE,** CALLED AS A WITNESS FOR THE PLAINTIFF,
24 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:)

25 **THE WITNESS:** YES, MA'AM.

1 **THE CLERK:** PLEASE BE SEATED.

2 **THE WITNESS:** OKAY. GOOD MORNING.

3 **THE CLERK:** THEN IF YOU'LL SCOOT UP TO THE MICROPHONE
4 AND THEN --

5 **THE WITNESS:** TEST. TEST.

6 **THE CLERK:** PLEASE STATE YOUR FULL NAME AND SPELL
7 YOUR LAST NAME.

8 **THE WITNESS:** MICHAEL PATRICK JOYCE. J-O-Y-C-E.

9 **THE COURT:** GOOD MORNING, SIR.

10 **THE WITNESS:** GOOD MORNING.

11 **THE COURT:** YOU MAY PROCEED.

12 **DIRECT EXAMINATION**

13 **BY MR. ETTINGHOFF:**

14 **Q.** GOOD MORNING, MR. JOYCE.

15 **A.** GOOD MORNING.

16 **Q.** DO YOU KNOW THE PLAINTIFF, CIARA NEWTON?

17 **A.** I DO.

18 **Q.** AND WHERE DO YOU WORK?

19 **A.** I WORK AT CHEVRON -- EXCUSE ME. I WORK FOR CHEVRON. I'M
20 A HARVEST TECHNICAL CONTRACTOR, AND I WORK WITH CONTRA COSTA
21 COUNTY OFFICE OF EDUCATION AND CHEVRON IN A CAREER TECHNICAL
22 EDUCATION PROGRAM.

23 **Q.** CAN YOU TELL ME A LITTLE BIT MORE ABOUT THE CAREER
24 TECHNICAL EDUCATION PROGRAM?

25 **A.** WHAT I RUN IS WHAT'S CALLED A ROP PROGRAM, AND IT IS FOR

1 PROCESS PLANT OPERATOR. AND THE OBJECTIVE OF THE COURSE IS TO
2 PREPARE STUDENTS FOR POTENTIAL JOBS IN THE PETROCHEMICAL
3 INDUSTRY. BEEN DOING THAT ABOUT FOUR-AND-A-HALF YEARS.

4 Q. OKAY. AND PRIOR TO BECOMING AN INSTRUCTOR FOR THAT
5 COURSE, DID YOU EVER WORK AT A REFINERY?

6 A. I HAVE 15 YEARS' EXPERIENCE AT CHEVRON RICHMOND REFINERY
7 AS A PROCESS PLANT OPERATOR.

8 Q. GREAT.

9 CAN YOU DESCRIBE WHAT ARE THE GOALS OF YOUR ROP PROGRAM?

10 A. THE GOALS OF THE PROGRAM, IT'S AN OUTREACH PROGRAM AT ITS
11 TRUE MEANING. TO HELP THE COMMUNITY, GIVE THEM OPPORTUNITIES
12 TO GET PRETTY GOOD JOBS IN THE INDUSTRY. AND WE'VE HAD A LOT
13 OF SUCCESS -- MYSELF, I'VE HAD A LOT OF SUCCESS GETTING PEOPLE
14 BE HIRED THAT ARE INTERESTED IN DOING THE WORK. SO WE PUT
15 THEM THROUGH A FIVE-MONTH PROGRAM THAT EVALUATES THEM BASED ON
16 ATTENDANCE, PARTICIPATION, TESTING, AND -- YOU KNOW, WE'LL
17 EVALUATE THEM AND HELP... HELP PREPARE THEM FOR JOBS IN THE
18 INDUSTRY. ONE OF THE BIGGEST THINGS WE DO IS JUST INTERVIEW
19 PREPARATION AND -- YEAH. WE HAVE A LOT OF SUCCESS.

20 Q. WHERE IS THIS PROGRAM HELD?

21 A. THE ACTUAL SITE IS AT CHEVRON HENSLEY FACILITY, WHICH IS
22 NEAR THEIR REFINERY. SO IT IS ASSOCIATED WITH CHEVRON.

23 Q. AND IS IT A CLASSROOM SETTING?

24 A. YES.

25 Q. DO YOU EVER MAKE ANY VISITS TO THE REFINERY ITSELF?

1 **A.** UH-HUH, WE DO. THAT IS ONE OF THE BENEFITS OF THE PROGRAM
2 IS IT DOES GIVE PEOPLE EXPOSURE TO THE REFINERY, LET THEM KNOW
3 WHAT THAT TYPE INDUSTRY IS LIKE. THAT IS PROBABLY THE MOST
4 EXCITEMENT THEY GET. THEY REALLY ENJOY THAT PART. BUT IT IS
5 ALSO VALUABLE TO EXPOSE PEOPLE TO WHAT GOES ON IN THESE TYPES
6 OF FACILITIES.

7 **Q.** WHEN WAS MS. NEWTON IN YOUR CLASS?

8 **A.** SHE WAS IN MY CLASS JULY TO OCTOBER 2015.

9 **Q.** DID YOU KNOW HER BEFORE SHE WAS IN YOUR CLASS?

10 **A.** NO. NO, I DID NOT.

11 **Q.** HOW WOULD YOU DESCRIBE HER AS YOUR STUDENT?

12 **A.** HOW WOULD I DESCRIBE HER? SHE DID REALLY WELL IN CLASS.
13 IN FACT, EXCELLENT SCORES ON TESTS, VERY CARING INDIVIDUAL.
14 BUT....

15 **Q.** DID YOU SAY YOU GRADED MS. NEWTON? DID YOU GRADE HER IN
16 THE COURSE?

17 **A.** YEAH. HER COURSE GRADE WAS ACTUALLY THE HIGHEST IN THE
18 SESSION WHILE SHE WAS THERE.

19 **Q.** DO YOU REMEMBER WHAT HER GRADE POINT AVERAGE WAS IN THE
20 CLASS?

21 **A.** 97-POINT -- I HAVE A NOTE. 97-PLUS. BUT IT WAS THE
22 HIGHEST. I DO TEACH THE CLASS TO GET TO ACHIEVE -- I TEACH --
23 I DON'T TRY TO DISSUADE PEOPLE, I GUESS YOU WOULD SAY. SO I
24 LIKE TO SEE GOOD PEOPLE THAT DO UNDERSTAND AND CAN PICK UP THE
25 CONCEPTS.

1 Q. UH-HUH.

2 A. THAT IS MOSTLY WHAT WE ARE DEALING WITH IS CONCEPTS.

3 Q. MS. NEWTON'S BROTHER-IN-LAW WAS IN THE COURSE AT THE SAME
4 TIME, CORRECT?

5 A. YES.

6 MR. LAFAYETTE: OBJECTION. RELEVANCY, YOUR HONOR.

7 THE COURT: OVERRULED.

8 THE WITNESS: I AM SORRY?

9 THE COURT: YOU CAN ANSWER.

10 THE WITNESS: I AM SORRY.

11 A. YEAH. HE'S ACTUALLY EMPLOYED AT THE REFINERY -- RICHMOND
12 REFINERY RIGHT NOW.

13 BY MR. ETTINGHOFF:

14 Q. MS. NEWTON HAD A HIGHER SCORE THAN HIM?

15 A. AS FAR AS -- YEAH. YEAH. AS FAR AS TEST SCORES, YES.

16 Q. DID MS. NEWTON COMPLETE THE COURSE?

17 A. NO.

18 Q. CAN YOU EXPLAIN WHY?

19 A. SHE RECEIVED A JOB OFFER FROM SHELL AND, OF COURSE, THAT
20 WAS BETTER THAN COMPLETING THE COURSE, WAS IF YOU GAINED THE
21 EMPLOYMENT. THAT'S WHAT WE ARE TRYING TO ACHIEVE.

22 MOST STUDENTS THAT GO THROUGH THE CLASS TRY TO FIND
23 EMPLOYMENT. MANY OF THEM DO NOT. SOME OF THEM DON'T EVEN
24 TRY. SOME WILL SUCCEED IN GETTING JOBS. USUALLY, I'D SAY,
25 DEPENDS ON THE CLASS, BUT THREE TO FIVE PEOPLE PER CLASS. AND

1 EACH CLASS CAN BE ANYWHERE FROM 15 TO 20 PEOPLE.

2 SO THERE'S NO GUARANTEES TO ANYTHING.

3 Q. OKAY. AND MS. NEWTON WAS A STUDENT IN YOUR CLASS. WAS
4 THERE ANY PARTICULAR QUALITIES THAT STOOD OUT TO YOU?

5 A. AS FAR AS CIARA, I KNOW SHE WAS VERY CONCERNED WITH OTHER
6 PEOPLE.

7 Q. UH-HUH.

8 A. SHE HELPED OUT. I HAD ONE STUDENT I WAS NOT TOO PLEASED
9 WITH THAT WAS KIND OF NODDING OFF IN CLASS, WHICH IS VERY
10 HIGHLY FROWNED UPON, OF COURSE. AND SHE TOOK HIM IN AND SAID
11 HEY, SIT HERE, YOU KNOW. KIND OF HELPED HIM THROUGH THE
12 PROCESS HIM THROUGH THE PROCESS. SHE SEEMED TO BE A VERY
13 CARING PERSON.

14 Q. YOU WOULD SAY SHE WAS A TEAM PLAYER?

15 A. YEAH. YEAH, DEFINITELY. DEFINITELY.

16 Q. LET'S TALK A LITTLE BIT MORE ABOUT THE COURSE ITSELF. DID
17 YOU TEACH ANY SAFETY TOPICS DURING MS. NEWTON'S COURSE?

18 A. THAT IS OUR MAIN FOCUS SAFETY IS SAFETY. WE START THE
19 CLASS WITH A SAFETY TOPIC. WE CONTINUE THE ENTIRE SESSION
20 BASED ON SAFETY. THAT IS THE NUMBER ONE ASPECT OF THE CLASS,
21 TO TEACH PEOPLE, TO GET THAT MINDSET, CHANGE THE WAY PEOPLE
22 BEHAVE. IT'S VERY DIFFICULT FOR ME TO SEE HOW PEOPLE BEHAVE
23 IN THE GENERAL PUBLIC, NOT ABIDING BY RULES AND REGULATIONS.
24 THIS KIND OF STUFF.

25 SO I TRY TO INSTILL IN MY CLASS -- AND MYSELF, MY OWN

1 BEHAVIOR, OF COURSE -- YOU KNOW, RULES, REGULATIONS, SAFETY.
2 THESE ARE THINGS THAT ARE INCREDIBLY IMPORTANT. IN THESE
3 TYPES OF JOBS, YOU'RE -- THERE'S AN INCREDIBLE SENSE OF
4 RESPONSIBILITY TO THE SURROUNDING COMMUNITY, YOUR COWORKERS,
5 THE ENVIRONMENT. SO SAFETY IS THE MOST IMPORTANT ASPECT THAT
6 I TEACH AND AS A COMPANY THAT I WORK FOR. THAT IS THE MOST
7 IMPORTANT THING. IT USED TO NOT BE LIKE THAT. THE INDUSTRY
8 IS KNOWN FOR NOT NECESSARILY BEHAVING IN THAT FASHION.

9 Q. AND WOULD YOU SAY THAT MS. NEWTON WAS ATTENTIVE TO THAT
10 TOPIC?

11 A. ABSOLUTELY.

12 Q. DID THE TOPIC OF COMPLACENCY EVER COME UP WHEN YOU TAUGHT
13 ABOUT SAFETY?

14 A. COMPLACENCY IS THE NUMBER ONE, I WOULD SAY -- I SHOULDN'T
15 USE THE TERM KILLER, BUT IT IS THE WORSE ASPECT OF THIS TYPE
16 OF INDUSTRY AND --

17 Q. IF YOU DON'T MIND ARE DESCRIBING WHAT COMPLACENCY IS.

18 A. COMPLACENCY IS JUST GOING ALONG WITH WHAT IS THE STATUS
19 QUO, NOT STEPPING UP. JUST KIND OF ALLOWING THINGS TO OCCUR.

20 SO THAT'S -- THAT IS THE MAIN THING THAT I STRIVE TO
21 ELIMINATE BECAUSE THIS IS DIFFICULT PROFESSION, ESPECIALLY
22 WITH THE HOURS THAT THESE FOLKS WORK. IT'S... IT'S... IT'S
23 TOUGH. A LOT OF TIMES WHAT HAPPENS IS YOU END UP WORKING
24 WEIRD SHIFTS, LONG SHIFTS. YOU END UP KIND OF MISSING SOME...
25 MISSING DETAILS.

1 Q. WOULD YOU SAY --

2 A. WHEN YOU TALK ABOUT COMPLACENCY, IT'S LIKE JUST KIND OF
3 LETTING THINGS GO, NOT WORKING WORRYING ABOUT IT, AND THAT IS
4 WHAT LEADS TO MOST ISSUES THAT WE STUDY. WE DO A LOT OF
5 STUDYING ON THE CHEMICAL SAFETY BOARD AND THINGS THAT HAVE
6 OCCURRED. AND I TRY TO PREACH TO THE STUDENTS LIKE, HEY, LOOK
7 AT THIS, DO NOT LET THESE THINGS HAPPEN.

8 I'VE BEEN PRETTY HAPPY WHEN MY STUDENTS COME BACK TO ME
9 SAYING HEY, MIKE, THIS STARTED HAPPENING AND I STOPPED IT, AND
10 I REMEMBER FROM ONE OF THE VIDEOS YOU SHOWED US. AND I'M
11 LIKE, THAT'S WHY I SHOW THEM TO YOU. I WANT YOU TO LEARN HOW
12 TO PREVENT THINGS FROM HAPPENING BECAUSE THINGS SNOWBALL, AND
13 THERE'S BEEN ENOUGH MAJOR EVENTS OF THESE KIND OF THINGS.
14 SORRY IF I'M RATTLING ON HERE.

15 Q. YOU MENTIONED VIDEOS THAT YOU SHOWED DURING THE CLASS.
16 WAS THERE ANY PARTICULAR VIDEO YOU SHOWED DURING MS. NEWTON'S
17 CLASS?

18 A. WELL, WE ALWAYS SHOW ONE OF THE MAIN EVENTS, 2005 CALLED
19 TEXAS CITY, VERY HORRIBLE EVENT THAT HAPPENED. IT IS ALL
20 BASED ON COMPLACENCY, THE LACK OF ATTENTION, PEOPLE THAT WERE
21 OVERWORKED, BAD INFORMATION TRANSFER, WHAT WE CALL TURNOVERS
22 IN INDUSTRY WHERE YOU HAVE TO SIT THERE AND TALK WITH THE
23 PERSON THAT'S REPLACING YOU, TELLING THEM EXACTLY WHAT IS
24 GOING ON. YOU ALSO HAVE TO WRITE THINGS DOWN.

25 SO COMMUNICATION, OVERWORK -- THERE IS A LOT OF ANGLES.

1 THAT IS LIKE ONE OF THE WORSE EXAMPLES OF A CATASTROPHE THAT
2 COULD HAVE BEEN PREVENTED.

3 Q. AND DO YOU RECALL THE DETAILS OF WHAT WAS IN THAT VIDEO?

4 A. WELL, THAT ONE IN PARTICULAR --

5 MR. LAFAYETTE: OBJECTION ON RELEVANCY.

6 THE COURT: OVERRULED.

7 BY MR. ETTINGHOFF:

8 Q. GO AHEAD, MR. JOYCE.

9 A. OKAY. THAT ONE IN PARTICULAR WE SHOW EVERYBODY IN THE
10 CLASS. THAT IS HOW WE STARTED ACTUALLY.

11 AND WHAT HAPPENED THERE WAS JUST OVERSIGHTS. OVERWORKED
12 PEOPLE, MISMANAGED FOLKS, MISMANAGED EMPLOYEES, EQUIPMENT THAT
13 DIDN'T FUNCTION PROPERLY.

14 PROBABLY THE MOST IMPORTANT THING IS NOT FOLLOWING
15 PROTOCOL, PROCEDURES. EVERYTHING HAS TO BE FOLLOWED IN
16 ORDER -- ANYTIME -- IT'S ABOUT STARTING A PROCESS UNIT. PLUS
17 IT WAS INADEQUATE SAFETY EQUIPMENT THAT SOME... 50-YEAR-OLD
18 TECHNOLOGY THAT THEY WERE USING REALLY SURPRISING. THEY --
19 HOPEFULLY, WELL, NO, IT DOESN'T HAPPEN IN CALIFORNIA, BUT THIS
20 WAS IN TEXAS. SO... BUT A LOT OF OVERSIGHT. A LOT OF THINGS
21 THAT, YOU KNOW, WHEN YOU LOOK AT IT, YOU'RE LIKE, REALLY?
22 THIS IS SO OBVIOUS.

23 BUT THESE THINGS SNOWBALL AND THEY HAPPEN. AND THAT ONE
24 ENDED UP... CAUSING A LOT OF LIVES, INNOCENT LIVES, IN FACT.
25 THAT'S ONE OF THE THINGS WE STUDY.

1 SOME NOT QUITE AS HEAVY, BUT THAT WE DO LEAD OFF WITH
2 THAT. AND SO THE MAIN FOCUS FOR ME IS -- LIKE I SAY, IT IS
3 ABOUT SAFETY.

4 **Q.** DID YOU EVER DISCUSS IN THE COURSE ABOUT WORKING WITH
5 HAZARDOUS CHEMICALS?

6 **A.** OF COURSE. WE STRESS THE -- LIKE I SAY, SAFETY IS NUMBER
7 ONE. EVERYTHING IN THIS INDUSTRY IS BASED ON PERSONAL
8 PROTECTIVE EQUIPMENT, WHAT YOU HAVE TO WEAR, HOW YOU HAVE TO
9 HANDLE MATERIAL, UNDERSTANDING WHAT THEY CALL SAFETY DATA
10 SHEETS, KNOWING THE CHEMICALS YOU'RE WORKING WITH, PRECAUTIONS
11 YOU HAVE TO TAKE. ALL THAT INFORMATION IS THERE. THERE IS
12 NOTHING KEPT SECRET. IT'S JUST -- BUT YEAH, WE TALK ABOUT
13 THAT CONSTANTLY, YES.

14 **Q.** DID YOU HAVE ANY EXPERIENCE WORKING WITH CHEMICALS WHILE
15 YOU WORKED AT CHEVRON?

16 **A.** YEAH. WELL, I MEAN --

17 **MR. LAFAYETTE:** OBJECTION. RELEVANCY, YOUR HONOR.

18 **THE COURT:** WHAT IS THE RELEVANCE? I'VE GIVEN YOU A
19 LITTLE BIT OF LATITUDE. WHAT IS THE RELEVANCE HERE?

20 **MR. ETTINGHOFF:** YOUR HONOR, MS. NEWTON -- THERE WAS
21 AN INCIDENT INVOLVING ACID AND MR. JOYCE HAD A PARTICULAR
22 EXPERIENCE WITH THE CHEMICAL, SULFURIC ACID.

23 **MR. LAFAYETTE:** NOT BEEN DESIGNATED AS AN EXPERT,
24 YOUR HONOR.

25 **THE COURT:** RESPONSE?

1 **MR. ETTINGHOFF:** HE TAUGHT THIS TOPIC DURING THE
2 COURSE AND IT'S IMPORTANT TO KNOW IF MS. NEWTON LEARNED ABOUT
3 IT DURING THE COURSE BEFORE SHE WENT TO WORK AT SHELL.

4 **THE COURT:** I WILL LET YOU DO THAT PORTION ONLY.
5 NOTHING BEYOND THAT. GO AHEAD. YOU CAN ASK YOUR QUESTION.

6 **BY MR. ETTINGHOFF:**

7 **Q.** MR. JOYCE, DID YOU HAVE ANY EXPERIENCE WORKING WITH
8 SULFURIC ACID AT CHEVRON?

9 **A.** YES. I WORKED IN WHAT THEY CALL A SULFURIC ACID
10 ALKYLATION UNIT WHICH -- WHERE SULFURIC ACID IS A CATALYST AND
11 WHAT'S CALLED AN ALKYLATION PROCESS WHERE YOU ARE COMBINING A
12 COUPLE OF DIFFERENT MATERIALS AND IT HAS TO REACT WITH THE
13 ACID TO MAKE SOMETHING ELSE. IT'S -- SO WE DEALT THE SULFURIC
14 ACID CONSTANTLY, DEALT WITH ALL THE PPE REQUIREMENTS, EXTRA
15 SPECIAL ATTENTION TO AREAS THAT CONTAIN THE MATERIAL. THAT
16 KIND OF STUFF, YEAH.

17 **Q.** IS THERE A REASON WHY YOU -- YOU MENTIONED PERSONAL
18 PROTECTIVE EQUIPMENT. IS THAT SOMETHING YOU WOULD NEED WHEN
19 YOU'RE DEALING WITH --

20 **MR. LAFAYETTE:** OBJECTION, YOUR HONOR.

21 **MR. ETTINGHOFF:** -- SULFURIC ACID?

22 **THE COURT:** OVERRULED.

23 **A.** ABSOLUTELY. SO AS WITH --

24 **THE COURT:** THAT'S THE ANSWER. I HAVE TO TAKE THIS
25 QUESTION BY QUESTION GIVEN THE NATURE OF THE OBJECTIONS. WHAT

1 IS YOUR NEXT QUESTION?

2 **BY MR. ETTINGHOFF:**

3 **Q.** DID YOU GIVE ANY GENERAL ADVICE OR TIPS TO YOUR STUDENTS
4 ABOUT SAFETY?

5 **A.** GENERAL? YEAH. THAT IS THE MOST IMPORTANT THING. AND
6 YOU ARE ULTIMATELY RESPONSIBLE FOR YOUR OWN SAFETY. THAT'S
7 SOMETHING I STRESS AND HIGHLIGHT.

8 **Q.** WOULD YOU SAY IT IS IMPORTANT FOR NEW PROCESS OPERATORS TO
9 ASK QUESTIONS DURING THEIR TRAINING?

10 **MR. LAFAYETTE:** LEADING, YOUR HONOR.

11 **THE COURT:** SUSTAINED.

12 **BY MR. ETTINGHOFF:**

13 **Q.** DID YOU EVER HAVE A CONVERSATION WITH CIARA ABOUT WHAT IT
14 IS LIKE FOR WOMEN TO WORK IN A REFINERY?

15 **MR. LAFAYETTE:** OBJECTION, YOUR HONOR.

16 **THE COURT:** OVERRULED.

17 **MR. LAFAYETTE:** IMPROPER OPINION.

18 **THE COURT:** OVERRULED. THE JURY CAN DECIDE THE
19 EXTENT AND WEIGHT TO GIVE ANY WITNESS'S OPINION. THAT IS YOUR
20 JOB. GO AHEAD.

21 **A.** YEAH, I ACTUALLY PULLED CIARA ASIDE EARLY-ON. IT IS NOT
22 UNUSUAL FOR ME TO TALK TO MY STUDENTS AND JUST TRY TO TELL
23 THEM, HEY, THIS IS NOT A JOB FOR EVERYBODY. THIS IS NOT
24 SOMETHING YOU WANT -- YOU NEED TO KNOW WHAT YOU ARE GETTING
25 INTO HERE, I GUESS IS THE BOTTOM LINE. THAT WOULD BE -- BUT

1 YEAH, I WAS CONCERNED. AND I ACTUALLY ASKED HER, WHY DO YOU
2 WANT TO DO THIS? WHY WOULD YOU WANT TO DO THIS?

3 SHE INDICATED SHE SPOKE WITH HER FATHER --

4 **MR. LAFAYETTE:** OBJECTION. HEARSAY, YOUR HONOR.

5 **THE COURT:** RESPONSE? IT IS HEARSAY.

6 **MR. ETTINGHOFF:** IT IS NOT FOR THE TRUTH OF THE
7 MATTER ASSERTED.

8 **THE COURT:** THEN WHAT IS IT FOR?

9 **MR. ETTINGHOFF:** IT'S TO GO TO MS. NEWTON'S DESIRE TO
10 WORK IN THE REFINERY.

11 **THE COURT:** WELL, THAT IS THE TRUTH IT SOUNDS LIKE.
12 SUSTAINED.

13 **BY MR. ETTINGHOFF:**

14 **Q.** DID YOU EVER SET UP A MEETING WITH MS. NEWTON AND ANY
15 OTHER OPERATORS?

16 **A.** WHAT I DO, ESPECIALLY WITH THE WOMEN, IS I DO HAVE OTHER
17 WOMEN THAT HAVE BEEN THROUGH THE OPERATIONS ASPECT. I MEET --
18 GET THEM TOGETHER AND I DON'T GET INVOLVED WITH WHAT THEY TALK
19 ABOUT, BUT I LET THEM KIND OF DO THEIR THING BECAUSE I THINK
20 THAT IS PRETTY IMPORTANT. KIND OF GET AWAY OF THE GUYS. IT
21 IS A TOUGH BUSINESS FOR WOMEN. THERE IS NO QUESTION ABOUT
22 THAT.

23 SO, YES. YEAH, I DO.

24 **Q.** BASED ON YOUR EXPERIENCE AS AN OPERATOR AT THE CHEVRON
25 REFINERY FOR 15 YEARS AND ALSO TEACHING MS. NEWTON, DID YOU

1 FORM ANY OPINION ABOUT WHETHER SHE WAS CAPABLE OF BECOMING A
2 PROFICIENT PROCESS OPERATOR?

3 **MR. LAFAYETTE:** OBJECTION. IMPROPER OPINION, LACKING
4 IN FOUNDATION.

5 **THE COURT:** OVERRULED.

6 **A.** SO THE THING WAS ANYBODY CAN DO THIS PARTICULAR JOB IF
7 THEY HAVE THE DESIRE AND PROPER TRAINING. THAT'S THE KEY, IS
8 WHETHER SOMEBODY IS GOING TO SPEND THE TIME WITH YOU. I HAVE
9 A STUDENT NOW THAT HER PROFESSION WAS A DOG TRAINER, DOG
10 GROOMER. AND I WAS LIKE, WHAT KIND OF BACKGROUND IS THAT?
11 BUT I TALKED WITH HER. I TALKED WITH HER TRAINING FOLKS AND
12 THEY'RE SAYING WHAT A FANTASTIC JOB SHE'S DOING AND THE KEY
13 WAS BECAUSE WHO WAS TRAINING HER. AND THAT'S THE MAIN THING.
14 THIS JOB IS ALL ABOUT TRAINING. IT'S CONSTANT, IT IS
15 CONTINUOUS, AND IT GOES ON FOR AS LONG AS YOU'RE EMPLOYED
16 THERE. THAT IS THE KEY AS TO HOW ANYBODY SUCCEEDS OR DOESN'T
17 SUCCEED.

18 **Q.** HOW LONG WOULD YOU SAY IT TAKES FOR AN OPERATOR TO BE
19 TRAINED TO BECOME A PROFICIENT REFINERY OPERATOR?

20 **MR. LAFAYETTE:** OBJECTION. RELEVANCE AND IMPROPER
21 OPINION.

22 **THE COURT:** A PROCESS OPERATOR? OR REFINE --

23 **MR. ETTINGHOFF:** REFINERY PROCESS OPERATOR.

24 **THE COURT:** ALL RIGHT. I'LL ALLOW IT. THE OBJECTION
25 IS OVERRULED.

1 **A.** HOW LONG? THAT IS AN OPINION AND THOSE OPINIONS WOULD
2 VARY FROM TEN YEARS ON. PROFICIENT, COMPETENT, YOU KNOW.
3 THERE IS DIFFERENT LEVELS BUT IT IS A CONTINUOUS TRAINING
4 PROCESS. WITH WHAT I WENT THROUGH IS THREE YEARS TO GET FULLY
5 QUALIFIED AS WHAT THEY CALL AN OPERATOR, PROCESS PLANT
6 OPERATOR IS CONTINUOUS TRAINING THE WHOLE TIME. EVEN THEN AT
7 THAT POINT, IT IS JUST NONSTOP. YOU ARE CONSTANTLY LEARNING.
8 YOU DON'T COME INTO THE PLACE AND UNDERSTAND WHAT IS GOING ON.
9 IT JUST DOESN'T WORK LIKE THAT.

10 **MR. ETTINGHOFF:** NO FURTHER QUESTIONS.

11 **THE COURT:** CROSS.

12 **JUROR:** MAY I HAVE ANOTHER PEN?

13 **THE COURT:** YES. CAN WE GET HER ANOTHER PEN, PLEASE?

14 **THE CLERK:** DID YOU WRITE IT DOWN? OH, YOU NEED A
15 PEN.

16 **THE COURT:** NO, SHE DIDN'T WRITE IT DOWN. SHE DIDN'T
17 HAVE A PEN.

18 (LAUGHTER)

19 **THE COURT:** YOU MAY PROCEED.

20 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

21 **CROSS-EXAMINATION**

22 **BY MR. LAFAYETTE:**

23 **Q.** GOOD MORNING, SIR.

24 **A.** GOOD MORNING.

25 **Q.** WE HAVE NEVER MET, HAVE WE?

1 **A.** ARE YOU GARY?

2 **Q.** I'M GARY.

3 **A.** HI, GARY. YOU CALLED ME BUT WE HAVEN'T MET IN PERSON, NO.

4 **Q.** HAVE YOU MET WITH PLAINTIFF'S COUNSEL?

5 **A.** I'M SORRY?

6 **Q.** HAVE YOU MET WITH ANY OF THE LAWYERS HERE?

7 **A.** YES, I HAVE.

8 **Q.** YOU HAVE?

9 **A.** YES.

10 **Q.** SO I HAVE A FEW QUESTIONS FOR YOU.

11 **A.** SURE.

12 **Q.** YOU MENTIONED SOMETHING ABOUT THE SUCCESS OF YOUR PROGRAM,
13 RIGHT?

14 **A.** UH-HUH.

15 **Q.** AND HOW DO YOU MEASURE SUCCESS?

16 **A.** GETTING -- BOTTOM LINE, GETTING PEOPLE EMPLOYED.

17 **Q.** GETTING PEOPLE EMPLOYED?

18 **A.** YEAH.

19 **Q.** YOU BELIEVE YOU'VE BEEN SUCCESSFUL AT THAT?

20 **A.** I AM PRETTY PROUD OF THAT. YES, SIR.

21 **Q.** THANK YOU.

22 THIS YEAR DID YOU GET EIGHT PEOPLE EMPLOYED?

23 **A.** THIS YEAR BEING 2018, CURRENTLY AS WE STAND --

24 **Q.** YES.

25 **A.** I'D SAY THAT IS ACCURATE.

1 Q. AT CHEVRON?

2 A. THERE ARE OTHERS IN OTHER POSITIONS, OTHER COMPANIES.

3 Q. HOW MANY DIFFERENT REFINERIES ARE THERE AROUND HERE THAT
4 YOU'VE GOTTEN PEOPLE EMPLOYED IN?

5 A. SO SHELL, PHILLIPS 66, VALERO, TESORO. THERE IS ALSO A
6 COMPANY CALLED CHEMTRADE. THERE'S ALSO MATHES -- MATHESON
7 GAS. THERE IS MANY DIFFERENT -- THERE IS PIPELINE COMPANIES.
8 KINDER MORGAN. GOSH, THE LIST GOES ON.

9 Q. AND HAVE YOU BEEN GETTING PEOPLE EMPLOYED AT ALL OF THESE
10 DIFFERENT PLACES SINCE 2015?

11 A. I STARTED IN '14. AND MY FIRST HIRE, TECHNICALLY, WAS
12 PROBABLY -- YEAH, BY THE TIME THEY FINISHED THE PROGRAM WAS
13 PROBABLY 2015, AT PHILLIPS 66 ACTUALLY.

14 Q. AND THE INDIVIDUALS WHO TAKE -- WHO PARTICIPATE IN YOUR
15 PROGRAM, ARE THEY GUARANTEED A JOB --

16 A. NO.

17 Q. OR DO THEY --

18 A. NO. NO. IN FACT, YOU KNOW, CURRENTLY, GARY, WHAT I'M
19 DOING IS EVALUATING STUDENTS. TODAY IS THE LAST DAY OF OUR
20 CLASS. HOW CONVENIENT FOR ME.

21 IT'S A BELL-CURVE-TYPE SITUATION WHERE THERE'S OUTSTANDING
22 INDIVIDUALS THAT WILL GET OUR BACKING. THERE'S A BULK OF THE
23 FOLKS THAT DID WELL, THEY ARE KIND OF ON THEIR OWN. AND THERE
24 IS OTHER PEOPLE I WOULD ABSOLUTELY SAY NO WAY.

25 Q. DO PEOPLE WHO TAKE YOUR CLASS, DO THEY HAVE TO APPLY TO

1 THE VARIOUS REFINERIES IN ORDER TO GET JOBS?

2 **A.** OH, ABSOLUTELY. YEAH. YEAH. SO THERE'S NO -- THE
3 PURPOSE OF THE ROP PROGRAM IS TO GIVE A GENERAL AWARENESS OF
4 WHAT THIS JOB ENTAILS. WE, OF COURSE, GEAR IT TOWARDS THE
5 CHEVRON REFINERY BECAUSE THAT IS WHAT I KNOW AND THAT IS THE
6 MATERIAL I HAVE. SO THAT'S WHERE THEY WANT TO BE. OF COURSE,
7 AFTER THEY REALIZE, YOU KNOW, THIS IS A PRETTY GOOD PLACE TO
8 BE -- AND CURRENTLY I'M SOMEWHERE AROUND 40 PEOPLE HIRED IN
9 THAT TIME, BUT -- AND WITH MORE COMING AS WE SPEAK. I'M
10 HOPING TO HEAR ANY MINUTE NOW ON A NEW BATCH.

11 SO --

12 **Q.** CONGRATULATIONS.

13 **A.** YEAH, YEAH.

14 **Q.** BASED UPON THE WORK THAT YOU'VE BEEN DOING, DO YOU HAVE AN
15 UNDERSTANDING AS TO WHETHER OR NOT THE VARIOUS REFINERIES
16 AROUND HERE HAVE BEEN HIRING PEOPLE SINCE -- IN OPERATOR
17 POSITIONS SINCE 2015?

18 **A.** SO -- I MEAN I DON'T KNOW -- RIGHT NOW, OF COURSE, ALL
19 THIS AGING BABY BOOMERS ARE MOVING ON. THERE IS A HUGE
20 INFLUX, THERE IS A BIG TURNOVER GOING ON. THERE IS PEOPLE
21 HIRING EVERYWHERE. IT IS NOT JUST THE REFINERIES. BUT, YES,
22 NOW IS THE TIME. I TELL MY STUDENTS THAT ARE GRADUATING, TOLD
23 THEM LAST NIGHT, HEY, YOU GUYS ARE IN A GREAT SPOT HERE.

24 **Q.** WHEN YOU ARE TEACHING YOUR CLASSES, DO YOU TELL YOUR
25 STUDENTS ANYTHING ABOUT WHETHER OR NOT THESE ARE UNION

1 POSITIONS?

2 **A.** YEAH. YEAH.

3 **Q.** AND DO YOU TELL THEM ANYTHING ABOUT THE COMPENSATION
4 BECAUSE OF THE STATUS THAT THEY ARE UNION POSITIONS?

5 **A.** WE TALK ABOUT THE GENERAL RANGE OF MONIES, YEAH.

6 **Q.** WHAT DO YOU TELL THEM?

7 **A.** IT'S A GOOD PLACE TO BE. A LOT OF MONEY TO BE MADE. MOST
8 OF THE MONEY -- SO THESE ARE FOLKS GENERALLY SPEAKING THAT
9 ARE, YOU KNOW, WE DON'T HAVE OUR COLLEGE DEGREES PER SE. WE
10 DON'T HAVE FAMILY MONIES. IT IS PRETTY HARD-CORE, BLUE-COLOR
11 TYPES, RIGHT? THE IDEA THAT IF I GO THROUGH THIS TRAINING, IF
12 I GET EMPLOYED, IF I APPLY MYSELF, I CAN MAKE SOME PRETTY
13 DECENT MONEY. MOST OF IT WOULD BE BASED ON OVERTIME. MOST OF
14 IT WOULD INVOLVE LONG HOURS, BUT PEOPLE ARE WILLING TO DO
15 THAT. I ALWAYS WARN THEM, HEY, LIKE I SAID, THIS IS NOT FOR
16 EVERYBODY. THIS IS A TOUGH WAY TO GO.

17 **Q.** DO YOU GIVE THEM A RANGE OF HOURLY RATES FOR WHAT THEY
18 COULD EXPECT?

19 **A.** AN IDEA.

20 **Q.** WHAT DO YOU TELL THEM?

21 **A.** LOW -- \$33 AN HOUR-ISH, DEPENDING ON WHAT IS GOING ON.
22 RIGHT NOW, THEY ARE GOING THROUGH CONTRACTS AND STUFF. JUST
23 KIND OF KEEP THEM ABREAST.

24 **Q.** DO YOU TELL THEM THEY WILL GET BENEFITS TOO?

25 **MR. ETTINGHOFF:** OBJECTION. OUTSIDE THE SCOPE.

1 **THE COURT:** SUSTAINED.

2 **BY MR. LAFAYETTE:**

3 **Q.** SO NOW LET'S TALK A LITTLE BIT ABOUT THAT -- YOUR
4 TRAINING. YOU MENTION THE WORD AWARENESS.

5 **A.** UH-HUH.

6 **Q.** WHAT DOES THAT MEAN IN CONNECTION WITH YOUR PROGRAM?

7 **A.** SO WHAT WE LIKE TO DO -- GARY, WHAT WE LIKE TO DO IS, THE
8 JOB IS NOT ACTUAL TRAINING, ON-SITE TRAINING. WELL, WE ARE
9 ON-SITE, EXCUSE ME. BUT YOU ARE NOT HANDS-ON. YOU'RE NOT AN
10 EMPLOYEE. WHAT I DO IS GIVE YOU AN OVERVIEW. WE CALL IT
11 LOOKING AT IT FROM 30,000 FEET. YOU ARE LOOKING AT SOMETHING,
12 BRINGING IN ALL THESE DIFFERENT CONCEPTS, IDEAS, AND THINGS
13 THAT ARE VERY -- WHAT WOULD I SAY -- UNUSUAL? OR DIFFERENT?
14 MOST PEOPLE HAVE NO CLUE ABOUT THIS KIND OF STUFF, SO PEOPLE
15 ARE FASCINATED.

16 I WAS JUST DOING AN EVALUATION LAST NIGHT. THEY TELL ME,
17 HEY, THIS WAS A GREAT EXPERIENCE. I'VE HAD PEOPLE SAY I
18 REALLY ENJOYED THIS CLASS, I'VE LEARNED SO MUCH; MAY NOT WANT
19 TO DO THE JOB BUT OTHERS ARE SO GUNG HO ABOUT WANTING TO DO
20 THE JOB. BUT MY JOB IS JUST TO GIVE THEM AN IDEA WHAT -- WHAT
21 THIS TYPE OF WORK ENTAILS. SOME PEOPLE, IT WORKS, SOME PEOPLE
22 IT DOESN'T.

23 **Q.** WHEN YOU ARE DOING THIS TRAINING WITH THEM, ARE YOU ABLE
24 TO GO INTO THE REFINERY AND TOUCH AND WORK ON THE EQUIPMENT
25 THERE?

1 **A.** NO.

2 **Q.** OKAY.

3 **A.** WHAT THEY -- WHAT THE -- THE BIG ADVANTAGE TO MY CLASS AS
4 OPPOSED TO MOST OTHERS IS WE DO GET TO GO IN. TO PUT YOUR
5 HANDS ON EQUIPMENT?

6 **Q.** NO.

7 **A.** NO.

8 **Q.** OKAY.

9 **A.** NO, NO.

10 **Q.** SO WHEN THEY FINISH YOUR CLASS --

11 **A.** UH-HUH.

12 **Q.** -- ARE THEY READY TO GO ON SHIFT IN A REFINERY AND START
13 DOING THE JOB RIGHT THERE AND THEN?

14 **A.** THEY ARE READY TO APPLY FOR A JOB.

15 **Q.** ALL RIGHT.

16 **A.** THAT IS THE GOAL, IS TO PREPARE THEM FOR WHAT THEY ARE
17 GETTING INTO. AND WE ACTUALLY PREPARE THEM FOR THE STAR
18 METHOD OF BEHAVIORAL BASED TRAINING, WHICH IS WHAT CHEVRON
19 DOES. SO WE SPEND ALMOST A MONTH JUST TRAINING THEM ON HOW TO
20 INTERVIEW.

21 **Q.** I THINK --

22 **A.** AS FAR AS, NO.

23 **Q.** NO. GOT IT?

24 **A.** BASICALLY, HOW IT WORKS. WE TELL THEM, YOU GO THROUGH MY
25 CLASS, IT'S NOT LIKE YOU CAN THROW OUT EVERYTHING YOU LEARNED

1 BUT YOUR NEXT STEP ONCE YOU GET EMPLOYED IS BASIC TRAINING,
2 WHICH AT CHEVRON IS SEVEN TO NINE WEEKS. YOU FINISH THAT,
3 YOUR TRAINING HASN'T EVEN BEGUN YET UNTIL YOU ACTUALLY HIT THE
4 UNIT. ONCE YOU HIT THE PARTICULAR UNIT YOU'RE ASSIGNED TO,
5 THAT IS WHEN YOUR TRAINING REALLY HAPPENS. SO YOU KIND OF
6 ROLL IT ALL TOGETHER AND IT IS A CONTINUOUS SNOWBALL OF
7 LEARNING.

8 SO, YES. YOU'RE NOT PREPARED. YOU HAVE AN IDEA. IN
9 FACT, WE TEACH PEOPLE DON'T GO IN THERE LIKE YOU KNOW WHAT'S
10 GOING ON BECAUSE THAT REALLY TURNS PEOPLE OFF. BUT WE ALSO
11 STRESS THE WHOLE IDEA OF SAFETY. AT CHEVRON, THE WHOLE THING
12 IS STOP, WORK, AUTHORITY. STOP, PAUSE WORK, AUTHORITY, WHERE
13 IF I DON'T SEE -- IF I SEE SOMETHING I DON'T LIKE, I CAN SAY,
14 HEY, STOP, LET'S TALK ABOUT THIS. THAT IS ONE OF OUR HUGE,
15 HUGE, HUGE INSISTENCES, I WOULD SAY.

16 Q. YOU -- I THOUGHT I HEARD YOU SAY YOU WORKED AS AN OPERATOR
17 FOR 15 YEARS?

18 A. UH-HUH.

19 Q. WHAT YEARS DID YOU WORK AS AN OPERATOR?

20 A. '78 TO '93.

21 Q. WAS THAT ALL AT CHEVRON?

22 A. YES.

23 Q. WOULD IT BE ACCURATE, THE LAST TIME YOU ACTUALLY OPERATED,
24 YOU WORKED ON A SHIFT WAS IN 1993?

25 A. CORRECT.

1 Q. AND YOU'VE NEVER WORKED ON SHIFT AT SHELL?

2 A. NEGATIVE. I HAVE NOT. YES.

3 Q. OKAY. AND SO YOU DON'T KNOW THE PEOPLE WHO WORK ON
4 SHIFT --

5 A. DO NOT KNOW SHELL'S PROCESS AT ALL.

6 Q. ALL RIGHT.

7 A. YES. AND I IMAGINE IT'S DIFFERENT. I ONLY KNOW CHEVRON'S
8 PROCESS.

9 Q. SO IN THE -- DO YOU KEEP IN TOUCH WITH YOUR STUDENTS AFTER
10 THEY LEAVE?

11 A. SOME, I DO. IT'S KIND OF A TOUGH SPOT FOR ME BECAUSE I
12 WOULD LIKE TO KEEP IN TOUCH. I CONSIDER MYSELF MORE OF A
13 MENTOR. BUT IT'S SOMEWHAT FROWNED UPON.

14 Q. I ASKED YOU BEFORE IF YOU'D SPOKE TO THE LAWYERS BEHIND ME
15 HERE AND YOU SAID YOU HAD. AND SINCE 2016, HAVE YOU SPOKEN
16 WITH MS. CIARA NEWTON?

17 A. I -- UP UNTIL RECENTLY?

18 Q. YES.

19 A. I HAPPENED TO ENCOUNTER HER AND HER FUTURE HUSBAND -- THEY
20 WEREN'T MARRIED AT THE TIME -- THEY WERE OUT HIKING. BUT AS
21 FAR AS KEEPING IN TOUCH, NO. AND I DO OCCASIONALLY SEE HER
22 BROTHER-IN-LAW BECAUSE HE WAS ONE OF MY STUDENTS AND I TALK
23 WITH HIM. HE DOES WORK OUT AT CHEVRON, THE ONE WE SPOKE OF
24 EARLIER.

25 Q. AND ASIDE FROM --

1 **A.** I DON'T HAVE REALLY ANY RELATIONSHIP WITH THEM -- CIARA.

2 **Q.** ASIDE FROM HER POSSIBLY ASKING YOU TO PARTICIPATE IN THIS
3 CASE, HAVE YOU HAD ANY CONVERSATIONS WITH HER OTHER THAN, OH
4 HI, HOW ARE YOU? SOMETHING LIKE THAT?

5 **A.** ASIDE FROM THIS, NO REALLY CONTEXT AT ALL, NO. NO REAL
6 CONTEXT AT ALL.

7 **Q.** ALL RIGHT. HAS SHE CALLED YOU UP AND ASKED YOU TO HELP
8 HER GET A JOB IN A REFINERY?

9 **A.** HUH-UH. NO.

10 WELL, SO THE THING -- THE LAST I SAW CIARA AS FAR AS --
11 SHE WAS ON HER WAY TO SHELL. AND IT WAS A LAST MINUTE, KIND
12 OF JAM SESSION OF, OKAY, THIS IS HOW YOU PREPARE FOR INTERVIEW
13 KIND OF THING AND THEN....

14 **Q.** I WANT TO TALK TO YOU A LITTLE BIT ABOUT COMPLACENCY.
15 THERE WAS SOMETHING YOU SPOKE ABOUT EARLIER TODAY.

16 **A.** OKAY.

17 **Q.** DID YOU DESCRIBE TO THEM COMPLACENCY CAN BE THE INDIVIDUAL
18 OPERATOR BEING COMPLACENT IN THEIR FUNCTIONS AT THE REFINERY?

19 **A.** THAT IS -- THAT COULD BE, YES. YES. ABSOLUTELY.

20 **Q.** AND WHEN YOU TALKED TO THEM, DID YOU TELL THEM THAT
21 COMPLACENCY CAN BE NOT PAYING ATTENTION TO DIRECTIONS?

22 **A.** COULD BE, YES. SURE.

23 **Q.** DID YOU TELL THEM THAT COMPLACENCY CAN BE NOT PERFORMING
24 PROCEDURES IN THE PROPER WAY?

25 **A.** YES.

1 Q. AND DID YOU TELL THEM THAT, IF THEY DON'T FOLLOW
2 PROCEDURES IN THE RIGHT WAY IN A REFINERY, THEY COULD GET
3 PEOPLE KILLED?

4 A. THAT'S A STRONG STATEMENT, BUT ON CERTAIN LEVELS THAT
5 COULD BE POSSIBLE. YES.

6 Q. AND DID YOU TELL THEM THAT IF THEY DON'T FOLLOW THE
7 PROCEDURES AND PEOPLE SEE IT, THEY WILL BRING IT TO THEIR
8 ATTENTION?

9 A. YES.

10 Q. DID YOU TELL THEM THAT IF THEY MAKE MISTAKES, THAT IT'S
11 IMPORTANT FOR THE INTEGRITY OF THE REFINERY THAT THEY BRING
12 THOSE MISTAKES FORWARD?

13 MR. ETTINGHOFF: OBJECTION. LEADING.

14 THE COURT: IT'S CROSS-EXAMINATION. OVERRULED.

15 A. YEAH, SO IT SHOULD DEFINITELY BRING BE OPEN ABOUT --

16 Q. DID YOU GIVE THEM EXAMPLES OF THINGS THAT PEOPLE HAVE DONE
17 IN REFINERIES THAT WERE DANGEROUS?

18 A. YEAH. SO MOST OF OUR -- MOST OF THE SAFETY TRAINING I
19 RELY ON, WHAT'S CALLED THE CHEMICAL SAFETY BOARD, AND THE
20 VIDEOS THAT THEY HAVE AND WHAT THOSE ARE, THEY WILL COVER
21 CERTAIN SITUATIONS AND LAYOUT THESE THINGS THAT HAPPEN. SO WE
22 TRY TO LEARN FROM THAT. THAT'S THE WHOLE GOAL OF IT. I'VE
23 HAD PEOPLE ACCUSE ME OF -- OH, YOU DON'T WANT US TO WORK HERE.
24 TRYING TO SCARE THEM. BUT IT IS MORE JUST LEARNING ABOUT
25 POTENTIAL ISSUES.

1 Q. DID YOU TALK TO THEM ABOUT USING DEFECTIVE TOOLS AND
2 EQUIPMENT WHEN WORKING AT A REFINERY?

3 A. DEFECTIVE?

4 Q. BROKEN?

5 A. YOU HAVE TO ALWAYS USE THE RIGHT TOOL FOR THE JOB, YEAH.

6 Q. OKAY.

7 DO YOU KNOW WHAT AN OYSTER SHELL IS?

8 A. OYSTER SHELL?

9 Q. YEAH.

10 A. OYSTER SHELL COULD BE --

11 MR. ETTINGHOFF: OBJECTION. OUTSIDE THE SCOPE.

12 MR. LAFAYETTE: I'LL LEAVE IT, YOUR HONOR.

13 THE COURT: NOTHING ELSE?

14 MR. LAFAYETTE: NO, YOUR HONOR. THANK YOU.

15 THE COURT: ALL RIGHT. RE-EXAM LIMITED TO THE SCOPE
16 OF THE CROSS.

17 **REDIRECT EXAMINATION**

18 BY MR. ETTINGHOFF:

19 Q. MR. LAFAYETTE ASKED YOU IF YOU HAD -- MS. NEWTON HAD
20 CONTACTED YOU TO HELP HER GET A JOB AFTER SHE WAS FIRED FROM
21 SHELL. HOW HARD WOULD YOU SAY IT IS TO GET A JOB AFTER BEING
22 FIRED FROM A REFINERY?

23 MR. LAFAYETTE: OUTSIDE THE SCOPE. IMPROPER OPINION.
24 NOT RELEVANT.

25 THE COURT: OVERRULED.

1 **THE WITNESS:** HOW HARD WOULD IT BE?

2 **BY MR. ETTINGHOFF:**

3 **Q.** YES.

4 **A.** WELL, SO CIARA DIDN'T CONTACT ME ABOUT ANY JOB. BUT LIKE
5 IN MY CASE, ANYBODY CAN APPLY FOR A CHEVRON POSITION OR ANY
6 OTHER REFINERY POSITION, BUT USUALLY YOU HAVE TO HAVE
7 SOMETHING THERE TO HELP GAIN EMPLOYMENT. THAT IS THE PURPOSE
8 OF THE CLASS THAT I TEACH. A LOT OF TIMES -- WELL, ANYWHERE
9 ELSE ON THE PLANET, YOU WOULD NEED AT LEAST A AA DEGREE TO GET
10 ONE OF THESE JOBS. SO, YEAH.

11 I HAVE HAD STUDENTS, IN FACT, THAT HAVE BEEN FIRED FROM
12 OTHER JOBS AND, YOU KNOW, THE WHOLE THING ABOUT WHAT CAN BE
13 REPORTED AND STUFF, THAT'S....

14 **Q.** WOULD YOU SAY THE STUDENTS WHO HAVE BEEN FIRED FROM
15 REFINERY JOBS, WAS IT DIFFICULT FOR THEM TO OBTAIN ANOTHER
16 REFINERY JOB?

17 **A.** YES.

18 **MR. ETTINGHOFF:** NO FURTHER QUESTIONS.

19 **THE COURT:** WHAT WAS THE ANSWER?

20 **MR. ETTINGHOFF:** HE SAID YES.

21 **THE WITNESS:** YES.

22 **MR. LAFAYETTE:** ONE QUESTION, YOUR HONOR.

23 **THE COURT:** OKAY. FROM THERE IS FINE.

24 **THE WITNESS:** ARE YOU ALL RIGHT, GARY?

25 **MR. LAFAYETTE:** YES.

RECROSS-EXAMINATION

BY MR. LAFAYETTE:

Q. THOSE PEOPLE WHO HAVE COME TO YOU IN THE PAST --

A. THERE'S REALLY -- I KNOW OF ONE.

Q. OKAY. GET A JOB?

A. WITH CHEVRON?

Q. WITH ANY REFINERY?

A. I HAVE NO IDEA. BUT THE INDIVIDUAL DID PRETTY WELL IN MY CLASS BUT I WAS A LITTLE CONCERNED MYSELF ABOUT WHY THEY -- AND ACTUALLY, I DIDN'T EVEN -- HE REALLY WANTED TO TELL ME HOW HE GOT FIRED. I DIDN'T WANT TO KNOW BECAUSE IT IS NONE OF MY BUSINESS.

Q. OKAY.

A. BUT IT WAS ALSO A CONCERN.

MR. LAFAYETTE: ALL RIGHT. NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: ALL RIGHT. ANYTHING ON THAT QUESTION?

MR. ETTINGHOFF: NO.

THE COURT: SIR, YOU ARE EXCUSED. THANK YOU.

THE WITNESS: OKAY.

THE COURT: NEXT WITNESS.

MS. SMALLETS: THE PLAINTIFF CALLS CAMERON CURRAN.

(CAMERON CURRAN, CALLED AS A WITNESS FOR THE PLAINTIFF, HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:)

THE WITNESS: YES.

1 **THE CLERK:** PLEASE BE SEATED. IF YOU WILL SCOOT UP
2 TO THE MICROPHONE AND THEN PLEASE STATE YOUR FULL NAME AND
3 SPELL YOUR LAST NAME.

4 **THE WITNESS:** MY NAME IS CAMERON CURRAN.
5 C-U-R-R-A-N.

6 **MS. SMALLETS:** GOOD MORNING, MR. CURRAN.

7 **THE WITNESS:** GOOD MORNING.

8 **THE COURT:** GOOD MORNING. I USUALLY SAY GOOD
9 MORNING, TOO. IT'S VERY SCARY TO BE HERE IN FRONT OF A
10 FEDERAL JUDGE AND JURORS.

11 YOU MAY PROCEED.

12 **MS. SMALLETS:** YOUR HONOR, MAY I APPROACH THE
13 WITNESS?

14 **THE COURT:** YOU MAY.

15 (EXHIBIT BINDER HANDED TO WITNESS.)

16 **DIRECT EXAMINATION**

17 **BY MS. SMALLETS:**

18 **Q.** MR. CURRAN, YOU WORK FOR SHELL OIL PRODUCTS?

19 **A.** YES, MA'AM.

20 **Q.** AND YOU'VE WORKED AT THE SHELL REFINERY IN MARTINEZ FOR
21 ABOUT 12 YEARS, RIGHT?

22 **A.** YES.

23 **Q.** YOU WORK IN OPCEN?

24 **A.** I DO.

25 **Q.** YOU BEGAN SUPERVISING CIARA NEWTON IN MAY OF 2016,

1 CORRECT?

2 A. CORRECT.

3 Q. AT THAT TIME YOU WERE A TEMPORARY SHIFT TEAM LEAD?

4 A. CORRECT.

5 Q. AND DURING THE TIME PERIOD IN WHICH YOU WERE SUPERVISING
6 MS. NEWTON, YOU REPORTED TO ERIC PEREZ, CORRECT?

7 A. YES.

8 Q. AND HE WAS THE PRODUCTION SUPERVISOR FOR YOUR AREA?

9 A. YES.

10 Q. DURING THE TIME PERIOD YOU SUPERVISED MS. NEWTON, YOU
11 WANTED TO BECOME A PERMANENT SHIFT TEAM LEAD, CORRECT?

12 A. SURE.

13 Q. YOU ULTIMATELY APPLIED FOR THAT POSITION?

14 A. I DID.

15 Q. AND YOU RECEIVED THAT PROMOTION IN 2016?

16 A. YES.

17 Q. AND ERIC PEREZ WAS THE PRODUCTION SUPERVISOR DURING THAT
18 TIME?

19 A. YES.

20 Q. YOU KNEW THAT ERIC WOULD BE INVOLVED IN DECIDING WHETHER
21 YOU WOULD GET THAT PROMOTION, CORRECT?

22 A. YEAH.

23 Q. I WANT TO TALK ABOUT THE FIRST PROGRESS REVIEW YOU GAVE
24 MS. NEWTON. ONE OF YOUR JOB DUTIES AS A TEMPORARY SHIFT TEAM
25 LEAD WAS TO SUPERVISE AND GIVE PROGRESS REVIEWS TO

1 PROBATIONARY EMPLOYEES, CORRECT?

2 A. YES.

3 Q. ON JUNE 9TH, YOU GAVE MS. NEWTON A PROGRESS REVIEW?

4 A. CAN I LOOK IN THE BOOK?

5 Q. EXHIBIT 19.

6 A. YES.

7 Q. IS EXHIBIT 19 A COPY OF THE PERFORMANCE REVIEW YOU GAVE TO
8 MS. NEWTON?

9 A. YES.

10 MS. SMALLETS: YOUR HONOR, WE WOULD LIKE TO ADMIT
11 EXHIBIT 19 INTO EVIDENCE.

12 THE COURT: ANY OBJECTION?

13 MR. LAFAYETTE: NO, YOUR HONOR.

14 THE COURT: 19 IS ADMITTED.

15 (PLAINTIFF'S EXHIBIT 19 RECEIVED IN EVIDENCE)

16 BY MS. SMALLETS:

17 Q. IS THAT YOUR SIGNATURE ON THE BOTTOM OF PAGE 2?

18 A. YES, MA'AM.

19 Q. IS THAT ERIC PEREZ'S SIGNATURE AS WELL?

20 A. I ASSUME SO. I WOULDN'T RECOGNIZE HIS SIGNATURE.

21 (DISPLAYED ON SCREEN.)

22 Q. NOW, IN THIS REVIEW YOU OBSERVED THAT MS. NEWTON IS
23 GETTING THE HANDS-ON EXPERIENCE SHE NEEDS TO BECOME A
24 PROFICIENT OPERATOR, CORRECT?

25 A. YES.

1 Q. AND YOU KNEW THAT MS. NEWTON WAS VERY SAFETY MINDED AND
2 NOT AFRAID TO BRING UP SAFETY CONCERNS, CORRECT?

3 A. CORRECT.

4 Q. AND BASED ON YOUR KNOWLEDGE OF MS. NEWTON'S PERFORMANCE AT
5 THAT TIME, YOU RECOMMENDED THAT SHE CONTINUE AS AN EMPLOYEE,
6 DIDN'T YOU?

7 A. YES.

8 Q. LET'S TURN TO THE SULFURIC ACID TANK. PLEASE TAKE A LOOK
9 AT EXHIBIT 85 IN YOUR WITNESS BINDER.

10 MR. LAFAYETTE: I COULDN'T HEAR THE EXHIBIT NUMBER,
11 YOUR HONOR.

12 THE COURT: 85.

13 MR. LAFAYETTE: THANK YOU.

14 BY MS. SMALLETS:

15 Q. DO YOU RECOGNIZE THESE DOCUMENTS?

16 A. IT'S A SHIFT REPORT.

17 Q. THEY ARE OPERATOR SHIFT REPORTS THAT MS. NEWTON COMPLETED?

18 A. YES.

19 Q. AT THE REFINERY, PROCESS OPERATORS USE SHIFT REPORTS TO
20 RECORD WHAT HAPPENED DURING THEIR SHIFT, CORRECT?

21 A. CORRECT.

22 Q. SO THEY CAN TELL SUPERVISORS AND OTHER OPERATORS WHAT
23 HAPPENED, RIGHT?

24 A. RIGHT. IT'S A RECORD OF WHAT'S GOING ON AND THE STATE OF
25 THE UNIT.

1 Q. TALK ABOUT CHANGES THAT HAPPENED IN THE UNIT?

2 A. CORRECT.

3 Q. AND AS THE SHIFT TEAM LEAD, YOU REVIEW THOSE REPORTS AS
4 PART OF YOUR JOB DUTIES?

5 A. YES.

6 MS. SMALLETS: YOUR HONOR, WE WOULD LIKE TO ADMIT
7 EXHIBIT 85 INTO EVIDENCE.

8 THE COURT: ANY OBJECTION?

9 MR. LAFAYETTE: NO, YOUR HONOR.

10 THE COURT: 85 IS ADMITTED.

11 (PLAINTIFF'S EXHIBIT 85 RECEIVED IN EVIDENCE)

12 BY MS. SMALLETS:

13 Q. PLEASE TAKE A LOOK AT THE FIRST PAGE OF EXHIBIT 85.

14 (DISPLAYED ON SCREEN.)

15 THIS IS A SHIFT OPERATOR REPORT CREATED BY MS. NEWTON ON
16 JUNE 19, 2016, CORRECT?

17 A. YES.

18 Q. AND YOU REVIEWED THIS PARTICULAR SHIFT REPORT, DIDN'T YOU?

19 A. I MAY HAVE. I DON'T REMEMBER.

20 Q. TAKE A LOOK AT THE SECOND PAGE TOWARD THE BOTTOM. DO YOU
21 SEE YOU ARE LISTED AS ONE OF THE CONTRIBUTING AUTHORS?

22 A. YES.

23 Q. DOES THAT REFRESH YOUR RECOLLECTION THAT YOU REVIEWED THIS
24 REPORT?

25 A. IT DOESN'T IDENTIFY THAT I REVIEWED IT. I BELIEVE I

1 PUBLISHED THIS AT A LATER TIME. SO THE PROCESS WOULD BE
2 OPERATOR WRITES THEIR SHIFT REPORT. WHEN THEY'RE DONE AND
3 PRINT IT UP, THEY DO WHAT'S CALLED PUBLISHING, WHICH SENDS IT
4 INTO A SYSTEM. IT'S LIKE A FINAL DOCUMENT.

5 SOMETIMES PEOPLE FORGET TO PUBLISH AND, LATER ON, WHEN I'M
6 LOOKING THROUGH THE SHIFT REPORTS, IF I SEE SOME THAT ARE NOT
7 PUBLISHED FROM PREVIOUS SHIFTS, FROM PEOPLE ON MY CREW, I WILL
8 PUBLISH THEM.

9 **Q.** IT IS PART OF YOUR JOB TO REVIEW THOSE SHIFT REPORTS?

10 **A.** YES. AT THE END OF SHIFT TO GATHER INFORMATION FOR THE
11 UNITS, THINGS I MIGHT NOT HAVE HEARD ON THE RADIO OR ASKED
12 THEM IN PERSON, I READ THROUGH THE SHIFT REPORTS.

13 **Q.** ON THIS SHIFT REPORT, MS. NEWTON REPORTED THAT THE SIGHT
14 GLASS AND LEVEL INDICATOR ON THE SULFURIC ACID TANK ARE NOT
15 FUNCTIONING PROPERLY, CORRECT?

16 **A.** CORRECT.

17 **Q.** THE SIGHT GLASS AND THE LEVEL INDICATOR ARE TWO WAYS TO
18 DETERMINE THE LEVEL OF ACID IN A SULFURIC ACID TANK?

19 **A.** YES.

20 **Q.** THERE'S NO OTHER WAYS TO DETERMINE THE LEVEL OF ACID IN
21 THE SULFURIC ACID TANK?

22 **A.** NO. TWO LEVEL INDICATORS, THE GLASS AND THE TRANSMITTER.

23 **Q.** TAKE A LOOK AT THE PAGE THAT HAS DEF 3194 ON THE BOTTOM.
24 SO A FEW PAGES FORWARD IN YOUR EXHIBIT BINDER.

25 THAT'S A SHIFT REPORT THAT MS. NEWTON CREATED ON

1 JUNE 18TH, CORRECT?

2 **A.** CORRECT.

3 **Q.** AND SHE ALSO REPORTED THAT THE ACID TANK SIGHT GLASS AND
4 LEVEL INDICATOR ARE NOT WORKING, CORRECT?

5 **A.** CORRECT.

6 **Q.** AND TAKE A LOOK AT PAGE 3196.

7 (DISPLAYED ON SCREEN.)

8 THAT'S A SHIFT REPORT THAT MS. NEWTON CREATED ON
9 JUNE 19TH, CORRECT?

10 **A.** CORRECT.

11 **Q.** AND SHE AGAIN REPORTED THAT THE ACID TANK LEVEL INDICATOR
12 AND SIGHT GLASS ARE NOT WORKING, CORRECT?

13 **A.** CORRECT.

14 **Q.** AND TAKE A LOOK AT PAGE DEF 3198.

15 THAT'S A SHIFT REPORT MS. NEWTON COMPLETED WHO JUNE 20TH,
16 CORRECT?

17 **A.** CORRECT.

18 **Q.** AND ON THAT SHIFT REPORT SHE REPORTED AGAIN THAT THE ACID
19 SIGHT TANK LEVEL INDICATOR AND SIGHT GLASS AREN'T WORKING,
20 CORRECT?

21 **A.** CORRECT.

22 **Q.** TAKE A LOOK AT THE NEXT ONE FOR JUNE 24TH, 2016. BATES
23 STAMP DEF 3200.

24 SHE REPORTS AGAIN THAT THE ACID TANK AND LEVEL INDICATOR
25 ON THE SIGHT GLASS AREN'T WORKING, CORRECT?

1 **A.** CORRECT.

2 **Q.** SIGHT GLASS IN THE ACID TANK?

3 **A.** GOT YOU. YEAH, BOTH WERE NOT WORKING PER SHIFT REPORT.

4 **Q.** AND ON JUNE 25TH, THE NEXT DOCUMENT, BATES STAMP DEF 3202,
5 MS. NEWTON REPORTED AGAIN THAT THE SULFURIC ACID TANK SIGHT
6 GLASS AND LEVEL INDICATOR AREN'T WORKING, CORRECT?

7 **A.** CORRECT.

8 **Q.** THAT IS SOMETHING SHE SHOULD HAVE BEEN REPORTING IN HER
9 SHIFT REPORT?

10 **A.** YES. AS WELL AS NOTIFYING THE SHIFT TEAM LEADER OR OTHER
11 OPERATORS THAT IT'S NOT WORKING.

12 **Q.** AND SHE IS DEMONSTRATING GOOD ATTENTION TO SAFETY BY --
13 SHE'S DEMONSTRATING GOOD ATTENTION TO SAFETY BY RECORDING THIS
14 INFORMATION?

15 **A.** SHE'S REPORTING WHAT SHE SEES IN THE UNIT, YEAH.

16 **Q.** NOW, LET'S TURN TO A SPILL THAT TOOK PLACE AT THE SAME
17 SULFURIC ACID TANK.

18 ON MONDAY, JUNE 4TH, YOU RECEIVED A PHONE CALL AND YOU
19 LEARNED THAT THE SULFURIC ACID TANK HAD OVERFLOWED, CORRECT?

20 **A.** INCORRECT. IT WAS ON JULY 4TH.

21 **Q.** ON JULY 4?

22 **A.** YEAH.

23 **Q.** SO, ON JULY 4TH, YOU RECEIVED A PHONE CALL AND YOU LEARNED
24 THAT THE SULFURIC ACID TANK HAD OVERFLOWED, CORRECT?

25 **A.** YES. WHILE REFILLING THE TANK, IT HAD OVERFILLED.

1 Q. THAT WAS THE SAME SULFURIC ACID TANK WAS WHERE MS. NEWTON
2 HAD BEEN REPORTING IN JUNE THAT THERE WERE PROBLEMS WITH THE
3 SIGHT GLASS AND LEVEL INDICATOR, CORRECT?

4 A. YOU'RE CORRECT. REPORTING SHIFT REPORT WITH NO
5 NOTIFICATION TO ME. NO -- AT THE STARTER SHIFT MEETINGS, WHEN
6 WE HAVE PROBLEMS, WE SAY THINGS LIKE --

7 COURT REPORTER: I'M SORRY. EXCUSE ME. WHAT?

8 THE WITNESS: DO I NEED TO TALK LOUDER?

9 COURT REPORTER: YES.

10 THE WITNESS: OKAY. SORRY. MAY I HAVE WATER?

11 MS. SMALLETS: SURE.

12 (PAUSE IN THE PROCEEDINGS.)

13 THE WITNESS: ALL RIGHT. EXCUSE ME.

14 SO DURING THE STARTER SHIFT MEETING THAT WE HAVE EVERY DAY
15 AT 7:00 O'CLOCK, WE ARE TO REPORT ON THINGS THAT WE ARE HAVING
16 PROBLEMS WITH IN THE UNITS, ANYTHING COMING UP FOR THE UNIT
17 THAT DAY, WORK THAT WE KNOW THAT IS GOING TO HAPPEN AND IF WE
18 ARE HAVING TROUBLE. SO THAT WOULD BE THE TIME TO IDENTIFY
19 THOSE TYPES OF THINGS AND BRING THEM UP.

20 BY MS. SMALLETS:

21 Q. MS. NEWTON REPORTED THIS ON SIX DIFFERENT SHIFT REPORTS,
22 CORRECT?

23 A. IN THE SHIFT REPORTS, YES. BUT NOT VERBALLY IDENTIFYING
24 THAT TO ME.

25 Q. IT IS YOUR JOB TO REVIEW THE SHIFT REPORTS, ISN'T IT?

1 **A.** CORRECT. DURING THIS PERIOD OF TIME, WE WERE HAVING A
2 UNIT STARTUP AFTER A TURNAROUND, A VERY LARGE TURNAROUND, AND
3 I MAY NOT HAVE READ THESE SPECIFIC SHIFT REPORTS.

4 IF I DIDN'T THINK THERE WAS SOMETHING ABNORMAL OR THAT I
5 NEEDED TO GET MORE INFORMATION ON FOR THIS PARTICULAR UNIT, I
6 WILL GO TO THE BOARD OPERATOR'S SHIFT LOGS TO GET MOST OF MY
7 INFORMATION FOR THAT. IF I HAVE FURTHER QUESTIONS, I WILL
8 LOOK AT THE OUTSIDE OPERATOR'S JOBS. SO, WITHOUT ANY VERBAL
9 NOTIFICATION, IT IS POSSIBLE I DIDN'T NOTICE IT.

10 **Q.** I WANT TO TALK ABOUT MS. NEWTON'S RESPONSE TO THE SAME
11 SULFURIC ACID SPILL.

12 SHE DOCUMENTED THE SULFURIC ACID SPILL IN HER SHIFT
13 REPORT, CORRECT?

14 **A.** CORRECT.

15 **Q.** YOU SAW THIS IN HER SHIFT REPORT AND TALKED TO HER ABOUT
16 IT, DIDN'T YOU?

17 **A.** I DID.

18 **Q.** YOU TOLD MS. NEWTON THAT JOSE NAVARRO, THE OPERATORS
19 WORKING WHEN THE SPILL HAPPENED, DIDN'T INCLUDE IT IN HIS
20 SHIFT REPORT, CORRECT?

21 **A.** YES.

22 **Q.** AND YOU TOLD HER THAT THE SHIFT TEAM LEAD DIDN'T SUBMIT A
23 ZERO TO SIXTY, CORRECT?

24 **A.** YES.

25 **Q.** NOW, ACCORDING TO SHELL POLICY, ALL ENVIRONMENTAL

1 INCIDENTS HAVE TO BE REPORTED, CORRECT?

2 A. YES.

3 Q. AN ENVIRONMENTAL INCIDENT INCLUDES RELEASES, LEAKS, AND
4 SPILLS OF ANY LIQUID OR VAPOR TO ANY SURFACE, CORRECT?

5 A. YES.

6 Q. TAKE A LOOK AT EXHIBIT 97 IN YOUR WITNESS BINDER, PLEASE.
7 ARE YOU FAMILIAR WITH THIS DOCUMENT?

8 A. YES.

9 Q. THIS IS SHELL'S INCIDENT REPORTING POLICY, CORRECT?

10 A. CORRECT.

11 Q. AND THAT CONTAINS INFORMATION ABOUT SHELL'S POLICIES WITH
12 RESPECT TO REPORTING INCIDENTS AT THE REFINERY?

13 A. YES.

14 MS. SMALLETS: YOUR HONOR, WE WOULD LIKE TO MOVE
15 EXHIBIT SHALL 97 INTO EVIDENCE.

16 MR. LAFAYETTE: NO OBJECTION, YOUR HONOR.

17 THE COURT: ADMITTED.

18 (PLAINTIFF'S EXHIBIT 97 RECEIVED IN EVIDENCE)

19 (DISPLAYED ON SCREEN.)

20 BY MS. SMALLETS:

21 Q. A ZERO TO SIXTY IS A REPORT THAT'S SUPPOSED TO BE PREPARED
22 EVERY TIME THERE'S AN INCIDENT AT THE REFINERY, CORRECT?

23 A. YES.

24 Q. IT IS SUPPOSED TO BE PREPARED WITHIN 60 MINUTES OF THE
25 INCIDENT, CORRECT?

1 **A.** THAT'S THE IDEA.

2 **Q.** PLEASE TAKE A LOOK --

3 **A.** THAT'S THE IDEA.

4 **Q.** PLEASE TAKE A LOOK AT EXHIBIT 109 IN YOUR WITNESS BINDER.

5 IS THIS A COPY OF SHELL'S ZERO TO SIXTY REPORTING POLICY?

6 **A.** THIS IS THE WEB PAGE WHERE YOU WOULD GO TO SUBMIT THE
7 EMAIL FOR ZERO TO SIXTY TO SEND IT OUT TO OTHER PEOPLE IN THE
8 REFINERY ON THE EMAIL LIST.

9 **Q.** DOES IT CONTAINS INSTRUCTIONS FOR WHEN ZEROS TO SIXTIES
10 SHOULD BE PREPARED?

11 **A.** IT IS A BRIEF OVERVIEW, YES.

12 **Q.** YOU ARE FAMILIAR WITH THIS DOCUMENT?

13 **A.** YES, I AM.

14 **MS. SMALLETS:** YOUR HONOR, WE WOULD LIKE TO MOVE
15 EXHIBIT 109 INTO EVIDENCE.

16 **MR. LAFAYETTE:** NO OBJECTION, YOUR HONOR.

17 **THE COURT:** ADMITTED.

18 (PLAINTIFF'S EXHIBIT 109 RECEIVED IN EVIDENCE)

19 (DISPLAYED ON SCREEN.)

20 **BY MS. SMALLETS:**

21 **Q.** NOW, NO ZERO TO SIXTY WAS PREPARED FOR THAT SULFURIC ACID
22 SPILL BY THE TIME YOU TALKED TO MS. NEWTON ABOUT IT, CORRECT?

23 **A.** CORRECT.

24 **Q.** AND YOU -- WHEN YOU LEARNED THAT MS. NEWTON WAS
25 DOCUMENTING ON HER SHIFT REPORT, YOU TOLD -- HER ASKED HER IF

1 SHE WANTED TO GET HER COWORKERS IN TROUBLE, CORRECT?

2 A. YES.

3 Q. AND YOU TOLD HER THAT PUTTING INFORMATION IN HER SHIFT
4 REPORT MIGHT GET HER WORKERS IN TROUBLE?

5 A. I SAID THAT, IF YOU SEE THINGS THAT ARE NOT CORRECT OUT IN
6 THE UNIT THAT YOU DISCOVER, SOMETIMES IT IS BETTER TO TALK TO
7 OPERATORS FACE-TO-FACE AS OPPOSED TO PUTTING IT IN THE SHIFT
8 REPORT WITHOUT TALKING TO THEM.

9 Q. YOU TOLD HER SHE COULD GET A REPUTATION AS BEING A
10 TATTLETALE?

11 A. I DID WITH THE INTENTION OF HELPING HER WITH HER PEERS,
12 NOT HAVING A REPUTATION, A BAD REPUTATION.

13 Q. YOU TOLD HER THAT SHE COULD GET A REPUTATION OF BEING A
14 RAT?

15 A. I MAY HAVE USED THAT TERM, RAT OR TATTLETALE, OR BOTH. IT
16 IS A COMMON UNION TERM, A RAT IN THE UNION.

17 Q. WHEN THE SPILL HAPPENED, YOU HAVE BEEN SUPERVISING
18 MS. NEWTON FOR ABOUT SIX WEEKS, CORRECT?

19 A. AROUND THAT.

20 Q. AND YOU HAD NEVER MADE ANY ENTRY, GOOD, BAD, OR OTHERWISE,
21 IN HER PD LOG UP TO THAT TIME, CORRECT?

22 A. CORRECT. IT WAS A VERY BUSY TIME. STARTING UP UNITS.
23 SO, I JUST CAME OFF OF A 60 -- WELL, TWO MONTHS' WORTH OF
24 NIGHT SHIFTS. AND ALL THE CREWS WERE JUST STARTING TO COME
25 BACK ON TO SHIFT. IT WAS GETTING BACK TO NORMAL.

1 Q. MR. CURRAN, MY QUESTION TO YOU WAS: DURING THAT SIX-WEEK
2 PERIOD, YOU HAD NEVER MADE ANY ENTRY INTO MS. NEWTON'S PD LOG,
3 GOOD, BAD, OR OTHERWISE, CORRECT?

4 A. NO. THERE WAS NO TIME.

5 Q. NOW, LET'S TALK ABOUT WHAT HAPPENED NEXT.

6 BOTH YOU AND MS. NEWTON HAD A WEEK OFF IN THE SCHEDULE,
7 RIGHT?

8 A. OKAY.

9 Q. AND JULY 15TH, WAS THE FIRST DAY THAT BOTH OF YOU WERE
10 BACK AT WORK?

11 A. I DON'T HAVE A CALENDAR IN FRONT OF ME BUT SURE.

12 Q. TAKE A LOOK AT EXHIBIT 121.

13 A. PERFECT. THANK YOU.

14 Q. IS THAT A -- THE REFINERY SHIFT OPERATING SCHEDULE FOR THE
15 REFINERY FOR 2016?

16 A. YES, IT IS.

17 MS. SMALLETS: YOUR HONOR, WE WOULD LIKE TO ADMIT
18 EXHIBIT 121 INTO EVIDENCE.

19 MR. LAFAYETTE: NO OBJECTION, YOUR HONOR.

20 THE COURT: ADMITTED.

21 (PLAINTIFF'S EXHIBIT 121 RECEIVED IN EVIDENCE)

22 (DISPLAYED ON SCREEN.)

23 Q. SO JULY 15TH, WAS THE FIRST DAY THAT BOTH OF YOU WERE BACK
24 AT WORK, CORRECT?

25 A. CORRECT.

1 Q. AND THAT NEXT DAY, JULY 16TH, YOU MADE YOUR FIRST ENTRY IN
2 MS. NEWTON'S PD LOG, CORRECT?

3 A. OKAY. I'LL TAKE YOUR WORD FOR IT.

4 Q. THE PD LOG IS EXHIBIT 83, IF YOU WOULD LIKE TO LOOK AT IT?

5 THE CLERK: 80?

6 MS. SMALLETS: THREE.

7 THE WITNESS: CORRECT.

8 MR. LAFAYETTE: I DON'T KNOW IF IT HAS BEEN ADMITTED,
9 YOUR HONOR.

10 THE COURT: IT HAS NOT BEEN ADMITTED YET, 83.

11 MS. SMALLETS: I WAS JUST REFRESHING HIS
12 RECOLLECTION.

13 BY MS. SMALLETS:

14 Q. OVER THE NEXT THREE DAYS YOU MADE SIX MORE ENTRIES INTO
15 MS. NEWTON'S PD LOG, CORRECT?

16 A. CORRECT.

17 Q. AND THEN AFTER THAT POINT IN TIME, YOU NEVER MADE ANOTHER
18 ENTRY INTO MS. NEWTON'S PD LOG, CORRECT?

19 A. CORRECT.

20 Q. NOW, I WOULD LIKE TO TALK TO YOU ABOUT A FEW OF THOSE
21 INCIDENTS.

22 ON JULY 17TH, MS. NEWTON CAME TO YOU AND SHE TOLD YOU THAT
23 SHE MADE A MISTAKE, CORRECT?

24 A. CORRECT.

25 Q. SHE TOLD YOU THAT SHE HAD OPENED THE WRONG VALVE, CORRECT?

1 **A.** CORRECT.

2 **Q.** AND THAT CAUSED SOME WASH WATER TO LEAK?

3 **A.** CORRECT.

4 **Q.** AND SHE -- YOU DIDN'T KNOW SHE'D MADE THAT MISTAKE UNTIL
5 SHE TOLD YOU, CORRECT?

6 **A.** THAT IS CORRECT.

7 **Q.** AND WITHIN AN HOUR OR TWO, YOU COMPLETED A ZERO TO SIXTY
8 ABOUT THAT INCIDENT, CORRECT?

9 **A.** CORRECT.

10 **Q.** AND TAKE A LOOK AT EXHIBIT 21, PLEASE.

11 **A.** IS IT 121?

12 **Q.** JUST 21.

13 IS THAT THE ZERO TO SIXTY THAT YOU COMPLETED FOR THE BAKER
14 TANK INCIDENT?

15 **A.** YES, IT IS.

16 **Q.** OR THE SPILL OF THE WASH WATER?

17 **A.** YES.

18 **Q.** YOU DESCRIBE THIS INCIDENT IN THE ZERO TO SIXTY AS AN
19 OPERATOR NOTICED A PUDDLE IN THE CONTAINMENT AREA OF A BAKER
20 TANK HOLDING POTASSIUM PERMANGANATE WASH WATER. THEY NOTIFIED
21 THE STL, AND THEY FOUND THE SOURCE WAS A VALVE NOT CLOSED
22 COMPLETELY THAT WAS LEAKING BY. VALVE WAS TIGHTENED UP AND
23 THE LEAK WAS STOPPED. LEAK WAS CONTAINED IN THE DIKE AREA.
24 CORRECT?

25 **A.** THAT'S WHAT IT SAYS.

1 Q. THAT WAS AN ACCURATE DESCRIPTION OF THE INCIDENT?

2 A. IT'S FAIR, YEAH.

3 Q. OKAY.

4 MS. SMALLETS: YOUR HONOR, WE WOULD LIKE TO ADMIT
5 EXHIBIT 21 INTO EVIDENCE.

6 MR. LAFAYETTE: NO OBJECTION, YOUR HONOR.

7 THE COURT: 21 IS ADMITTED.

8 (PLAINTIFF'S EXHIBIT 21 RECEIVED IN EVIDENCE)

9 (DISPLAYED ON SCREEN.)

10 BY MS. SMALLETS:

11 Q. AND THE OPERATOR YOU WERE REFERRING TO WHEN YOU WROTE THAT
12 ZERO TO SIXTY WAS MS. NEWTON, CORRECT?

13 A. CORRECT.

14 Q. NOW, IN CONTRAST, A ZERO TO SIXTY FOR THE SULFURIC ACID
15 TANK SPILL WASN'T PREPARED UNTIL JULY 29TH, CORRECT?

16 A. CORRECT.

17 Q. PLEASE TAKE A LOOK AT EXHIBIT 38 IN YOUR WITNESS BINDER.
18 HAVE YOU SEEN THAT DOCUMENT BEFORE?

19 A. YES.

20 Q. AND THAT'S THE ZERO TO SIXTY THAT WAS PREPARED FOR THE
21 SULFURIC ACID TANK SPILL?

22 A. CORRECT.

23 Q. THAT WAS PREPARED ON JULY 29TH, CORRECT?

24 A. CORRECT.

25 Q. FOR THE SPILL THAT TOOK PLACE ON JULY 4TH, CORRECT?

1 **A.** THAT'S CORRECT.

2 **MS. SMALLETS:** YOUR HONOR, WE WOULD LIKE TO ADMIT
3 EXHIBIT 38 INTO EVIDENCE.

4 **MR. LAFAYETTE:** NO OBJECTION, YOUR HONOR.

5 **THE COURT:** ADMITTED.

6 (PLAINTIFF'S EXHIBIT 38 RECEIVED IN EVIDENCE)

7 (DISPLAYED ON SCREEN.)

8 **BY MS. SMALLETS:**

9 **Q.** AND TO THE BEST OF YOUR KNOWLEDGE, DONNIE GOFF, THE SHIFT
10 TEAM LEADER WHO PREPARED THAT ZERO TO SIXTY, DIDN'T RECEIVE
11 ANY CRITICISM FOR THE FACT THAT THAT WAS LATE?

12 **MR. LAFAYETTE:** OBJECTION. LACKING IN FOUNDATION
13 WITH THIS WITNESS CONSTITUTES INADMISSIBLE HEARSAY.

14 **THE COURT:** LAY A FOUNDATION.

15 **BY MS. SMALLETS:**

16 **Q.** YOU HAD MULTIPLE CONVERSATIONS WITH YOUR SUPERVISOR, ERIC
17 PEREZ, REGARDING THIS LATE ZERO TO SIXTY, DIDN'T YOU?

18 **A.** THAT IS CORRECT. AS WELL AS FEEDBACK FROM ME TO DONNIE
19 GOFF. BUT I DON'T KNOW IF HE HAD ANY REPERCUSSIONS FROM ERIC
20 OR NOT.

21 **Q.** SO YOU DON'T KNOW -- YOU ARE NOT AWARE OF HIM RECEIVING
22 ANY REPERCUSSIONS?

23 **A.** NOT FROM ERIC. JUST FEEDBACK FROM MYSELF.

24 **Q.** ON JULY 18TH, YOU MADE AN ENTRY INTO MS. NEWTON'S PD LOG
25 RELATING TO HER USE OF DRAEGER -- OF GASTEC TUBES, CORRECT?

1 **A.** CORRECT.

2 **Q.** AND THAT PD LOG IS A BETTER DESCRIPTION OF THAT INCIDENT
3 THAN YOUR MEMORY, CORRECT?

4 **A.** CORRECT.

5 **Q.** GASTEC TUBES ARE ALSO KNOWN AS DRAEGER TUBES, CORRECT?

6 **A.** YES. WE USE THE TERM INTERCHANGEABLY. IT IS A BRAND
7 NAME.

8 **Q.** DRAEGER TUBES ARE USED TO MEASURE THE PRESENCE OF GAS?

9 **A.** YES.

10 **Q.** AND TO MEASURE THE PRESENCE OF GAS, YOU BREAK OPEN EACH
11 END OF THE DRAEGER TUBE, CORRECT?

12 **A.** YES. YOU BREAK OPEN EACH END OF THE DRAEGER TUBE AND
13 INSERT INTO A TOOL, AND PULL IT. IT IS LIKE A PLUNGER OR
14 SYRINGE, AND IT DRAWS THE GAS SAMPLE THROUGH THE TUBE AND THE
15 REAGENTS -- THE REACTANTS INSIDE THE TUBE WILL CHANGE COLOR IN
16 THE PRESENCE OF SPECIFIC GASES THAT THEY ARE DESIGNED FOR.

17 **Q.** IF IT CHANGES COLOR, THAT INDICATES THAT ACID IS PRESENT?

18 **A.** DEPENDS ON THE TYPE OF TUBE. THEY HAVE DIFFERENT FLAVORS,
19 IF YOU WILL, TO DETECT SPECIFIC GASES.

20 **Q.** OKAY. AND THE TUBE AT ISSUE IN THIS INCIDENT, WHAT WAS
21 THAT BEING USED TO DETECT.

22 **A.** HYDROGEN SULFIDE.

23 **Q.** AND IT WOULD CHANGE COLOR IF HYDROGEN SULFIDE WAS PRESENT?

24 **A.** CORRECT.

25 **Q.** THERE'S NOT USUALLY HYDROGEN SULFIDE PRESENT IN THE

1 ATMOSPHERE, IS THERE?

2 **A.** NO. NOT OUT HERE.

3 **Q.** AND IF THE DRAEGER TUBE DOESN'T CHANGE COLOR, THAT MEANS
4 THERE'S NOT -- THE CHEMICAL THAT YOU ARE TRYING TO DETECT IS
5 NOT PRESENT, CORRECT?

6 **A.** CORRECT.

7 **Q.** NOW, IN HER PD LOG, YOU OBJECTED TO MS. NEWTON USING AN
8 OPEN PD -- DRAEGER TUBE, CORRECT?

9 **A.** IN THE PD LOG, YEAH. A BROKEN ONE.

10 **Q.** AND BY "BROKEN", YOU MEAN ONE THAT HAD BEEN OPENED BEFORE
11 SHE USED IT, CORRECT?

12 **A.** CORRECT.

13 I BELIEVE MS. NEWTON DIDN'T USE ANY DRAEGER TUBES OUT
14 THERE TO TAKE THE SAMPLE. THAT'S MY BELIEF. I WROTE IT IN
15 THE PD LOG AS A CONVERSATION -- A DOCUMENTATION OF OUR
16 CONVERSATION. BUT MY PERSONAL OPINION IS THERE WAS NO TUBE
17 USED.

18 **Q.** WHAT YOU DOCUMENTED IN THE PD LOG WAS THAT MS. NEWTON USED
19 A DRAEGER TUBE THAT HAD ALREADY BEEN OPENED, CORRECT?

20 **A.** BROKEN, YEAH.

21 **Q.** AND BY "BROKEN" WE MEAN THAT ONE OF THE ENDS WAS BROKEN
22 OFF, RIGHT? BROKEN OPEN?

23 **A.** SHE SAID SHE FOUND IT ON THE GROUND.

24 **Q.** SHE TOLD YOU THAT ONE OF THE ENDS WAS BROKEN, CORRECT?

25 **A.** SHE SAID IT WAS BROKEN AND SHE FOUND IT ON THE GROUND. I

1 DON'T THINK WE SPECIFIED WHETHER IT WAS ONE SIDE OR JUST
2 BROKEN. I CAN'T RECALL.

3 Q. OKAY. SHELL'S POLICIES ALLOW OPERATORS TO REUSE DRAEGER
4 TUBES UP TO TEN TIMES, CORRECT?

5 A. ON ONE SAMPLE. IT'S FOR THE -- IN LOW CONCENTRATIONS, YOU
6 WILL USE TEN PULLS TO DRAW THAT MUCH GAS THROUGH TO MEASURE
7 LOW QUANTITIES.

8 Q. TAKE A LOOK AT EXHIBIT 99. THIS IS SHELL'S SAMPLING AND
9 TESTING AND POLICY, CORRECT?

10 A. EXHIBIT 99?

11 Q. YES.

12 A. THIS IS A WORK CONSTRUCTION FOR HP-2.

13 Q. YOU ARE FAMILIAR WITH THIS WORK CONSTRUCTION?

14 A. I DON'T THINK I'VE LOOKED AT IT IN A WHILE, BUT I'VE SEEN
15 IT, YEAH.

16 Q. THIS WORK CONSTRUCTION IS FOR PEOPLE IN THE HP-2 UNIT?

17 A. IT IS.

18 Q. THAT IS ONE OF THE UNITS YOU ARE RESPONSIBLE FOR
19 SUPERVISING?

20 A. IT IS.

21 MS. SMALLETS: YOUR HONOR, WE WOULD LIKE TO ADMIT
22 EXHIBIT 99 INTO EVIDENCE.

23 MR. LAFAYETTE: NO OBJECTION.

24 THE COURT: ADMITTED.

(PLAINTIFF'S EXHIBIT 99 RECEIVED IN EVIDENCE)

(DISPLAYED ON SCREEN.)

BY MS. SMALLETS:

Q. TAKE A LOOK AT PAGE 1600.

DO YOU SEE THE SECOND NOTE?

A. YES.

Q. AND THIS NOTE INSTRUCTS OPERATORS: AFTER A NEGATIVE
RESULT MOST TUBES CAN BE USED UP TO TEN TIMES ON THE SAME DAY,
CORRECT?

A. YES. I BELIEVE YOU ARE REFERRING TO A DRAEGER BRAND TUBE.

Q. NOW, A FEW DAYS LATER, JULY 22ND, MS. NEWTON ALLOWED
ANOTHER OPERATOR, PATRICK NEUMAN, TO COVER THE FIRST 20
MINUTES OF HER SHIFT, CORRECT?

MR. LAFAYETTE: OBJECTION. REQUIRES HEARSAY ON THE
PART OF THIS WITNESS.

THE COURT: LAY A FOUNDATION.

BY MS. SMALLETS:

Q. YOU WERE SUPERVISING MS. NEWTON ON JULY 22ND, CORRECT?

A. YES.

Q. AND THERE WAS AN INCIDENT WHERE YOU BELIEVE THAT
MS. NEWTON WAS LATE TO WORK, CORRECT?

A. CORRECT.

Q. AND MS. NEWTON -- YOU LATER LEARNED MS. NEWTON HAD ASKED
MR. NEUMAN TO STAY AND COVER FOR HER, CORRECT.

MR. LAFAYETTE: OBJECTION. HEARSAY.

1 **THE COURT:** OVERRULED.

2 **BY MS. SMALLETS:**

3 **Q.** YOU CAN ANSWER.

4 **A.** SORRY. MY FIRST TIME.

5 **Q.** SURE.

6 **A.** CAN YOU REPEAT THE QUESTION, PLEASE?

7 **Q.** SURE.

8 YOU LEARNED THAT MS. NEWTON HAD REQUESTED THAT PATRICK
9 NEUMAN STAY AND COVER FOR HER?

10 **A.** YES.

11 **Q.** YOU SAW -- AND MR. NEUMAN WAS THE OUTGOING OPERATOR ON THE
12 SHIFT?

13 **A.** CORRECT. IT WAS A FRIDAY MORNING. MY TEAM, ME -- MYSELF
14 AND CIARA WOULD BE ON DAY SHIFTS AND THEN PATRICK WAS ON NIGHT
15 SHIFTS BEFORE THE WEEKEND. WE GOT AN EXTRA OPERATOR TO COVER.
16 CIARA WASN'T THERE. ABOUT 5:50, 6:00 O'CLOCK, I TOLD PATRICK
17 TO GO HOME.

18 **Q.** MS. NEWTON WAS REPLACING MR. NEUMAN, CORRECT?

19 **A.** YES. ONE OPERATOR HAS TO COME IN TO RELIEVE THE NEXT
20 OPERATOR BEFORE WE CAN LEAVE. YOU CAN'T JUST GO HOME.

21 **Q.** WHEN YOU SAW -- YOU SAW MR. NEUMAN THERE THAT MORNING,
22 RIGHT?

23 **A.** YES. YES.

24 **Q.** YOU TOLD HIM TO GO HOME RIGHT?

25 **A.** I DID.

1 Q. NOW, OPERATORS DO THIS ALL THE TIME, RIGHT, STAY AND COVER
2 FOR EACH OTHER?

3 A. OCCASIONALLY THEY CAN SET IT UP IF THEY HAVE SOMETHING
4 GOING ON. WE LIKE TO HAVE A WORK/LIFE BALANCE, AS YOU CALL
5 IT. SO SOMETIMES THERE'S THINGS THAT HAPPEN. YOU HAVE TO
6 PICK UP YOUR KIDS, GO SEE A PLAY, THAT TYPE OF THING. WE WILL
7 TRADE.

8 Q. SO IT DOES HAPPEN, RIGHT?

9 A. IT DOES.

10 Q. OKAY. AND YOU KNEW THAT?

11 A. YES.

12 Q. BUT YOU WANTED TO WRITE MS. NEWTON UP FOR BEING LATE ON
13 THAT DAY, DIDN'T YOU?

14 A. NO.

15 Q. YOU TOLD ERIC PEREZ THAT YOU WANTED TO WRITE MS. NEWTON UP
16 FOR BEING LATE ON THAT DAY, DIDN'T YOU?

17 A. I DON'T LIKE TO WRITE ANYBODY UP.

18 Q. YOU TOLD MR. PEREZ THAT YOU WANTED TO DOCUMENT THAT AS A
19 TARDY INCIDENT FOR MS. NEWTON, DIDN'T YOU?

20 A. IF SOMEBODY COMES IN TARDY, I'LL DOCUMENT IT. IT IS NOT
21 SOMETHING THAT I WOULD WANT DO.

22 Q. OKAY. YOU -- JUST SO I AM CLEAR. YOU TOLD MR. PEREZ,
23 HOWEVER, THAT YOU THOUGHT IT SHOULD BE DOCUMENTED, CORRECT?

24 A. I DON'T RECALL. I MAY HAVE.

25 Q. MR. PEREZ TOLD YOU -- ULTIMATELY TOLD YOU NO, RIGHT?

1 **A.** YES.

2 **Q.** AND HE SAID IT WAS BECAUSE YOU -- THAT THE OTHER OPERATORS
3 WERE ALLOWED TO GET AWAY WITH THAT?

4 **A.** THERE IS AN EMAIL. I DON'T KNOW IF IT IS IN HERE. CAN'T
5 BE THE EXACT WORDS, BUT HE BASICALLY SAID WE ARE NOT GOING TO
6 COUNT IT, YEAH.

7 **Q.** OKAY. NOW, YOU MET WITH MS. NEWTON ON JULY 22ND, CORRECT?

8 **A.** YEAH.

9 **Q.** AND SHE BROUGHT UP ISSUES OF EQUALITY DURING THAT MEETING,
10 DIDN'T SHE?

11 **A.** YES.

12 **Q.** AND SHE EXPRESSED CONCERNS TO YOU ABOUT UNEQUAL TREATMENT,
13 DIDN'T SHE?

14 **A.** YES.

15 **Q.** SHE TOLD YOU THAT SHE WAS NOT BEING TREATED FAIRLY OR SHE
16 WAS BEING TREATED DIFFERENT, RIGHT?

17 **A.** SOMETHING TO THAT EFFECT, YES.

18 **Q.** AND YOU DIDN'T ASK HER ANY FOLLOW-UP QUESTIONS ABOUT THAT,
19 DID YOU?

20 **A.** I DON'T RECALL. I MAY NOT HAVE.

21 **Q.** YOU DID, HOWEVER, ABOUT A WEEK LATER, TELL ERIC PEREZ THAT
22 SHE WAS PUSHING HARD ON THE EQUALITY THING, DIDN'T YOU?

23 **A.** YOU ARE REFERRING TO THE INSTANT MESSAGE?

24 **Q.** YES.

25 **A.** I DON'T REMEMBER WHAT DATE THAT WAS, IF IT WAS A WEEK, BUT

1 I DID MAKE THAT STATEMENT, YES.

2 Q. YOU DID TELL MR. PEREZ THAT MS. NEWTON WAS PUSHING HARD ON
3 THE EQUALITY THING?

4 A. YES. I'VE NEVER HAD THIS -- QUESTION MY INTEGRITY. I'VE
5 NEVER HAD THIS COME UP BEFORE. SO IT IS MY WAY OF
6 COMMUNICATING WITH HIM THAT THIS IS HAPPENING.

7 Q. YOU FELT MS. NEWTON WAS QUESTIONING YOUR INTEGRITY?

8 A. YES.

9 Q. TAKE A LOOK AT EXHIBIT 37.

10 (DISPLAYED ON SCREEN.)

11 IS THAT A COPY OF THE TEXT MESSAGE YOU EXCHANGED WITH ERIC
12 PEREZ?

13 A. YES. IT IS LIKE AN INSTANT MESSAGE ON THE COMPUTER.

14 Q. YOU SENT THAT ON YOUR COMPUTER?

15 A. YES, CORRECT.

16 Q. THAT SAME DAY, YOU HAD GIVEN MS. NEWTON -- EARLIER THAT
17 DAY YOU HAD GIVEN MS. NEWTON A PROGRESS REPORT, CORRECT?

18 A. CORRECT.

19 Q. LET'S TAKE A LOOK AT IT. IT'S EXHIBIT 40 IN YOUR EVIDENCE
20 BINDER.

21 MR. LAFAYETTE: I COULDN'T HEAR THE EXHIBIT NUMBER.

22 MS. SMALLETS: 40.

23 BY MS. SMALLETS:

24 Q. IS THAT THE PROGRESS REVIEW THAT YOU GAVE TO MS. NEWTON ON
25 JULY 29TH?

1 **A.** IT APPEARS TO BE. IT IS NOT THE SIGNED ISSUED COPY BUT IT
2 LOOKS LIKE IT, YES.

3 **MS. SMALLETS:** YOUR HONOR, WE WOULD LIKE TO MOVE
4 EXHIBIT 40 INTO EVIDENCE.

5 **THE COURT:** ANY OBJECTION?

6 **MR. LAFAYETTE:** NO OBJECTION, YOUR HONOR.

7 **THE COURT:** ADMITTED.

8 (PLAINTIFF'S EXHIBIT 40 RECEIVED IN EVIDENCE)

9 (DISPLAYED ON SCREEN.)

10 **BY MS. SMALLETS:**

11 **Q.** MS. NEWTON GOT RIGHT OUT IN OUR UNIT TO START HER READINGS
12 AND SAMPLES, DIDN'T SHE?

13 **A.** YES.

14 **Q.** AND IN THIS REVIEW, YOU SAID THAT YOU FOUND SOME ERRORS IN
15 HER WORK BUT SHE IS ACCEPTING THE FEEDBACK, RIGHT?

16 **A.** I DON'T SEE IT. I'LL TAKE YOUR WORD. I PROBABLY WROTE
17 THAT.

18 **Q.** WORK SPEED, ACCURACY, AND FAIRNESS -- THOROUGHNESS, I'M
19 SORRY, ON THE TOP RIGHT?

20 **A.** YES.

21 **Q.** THAT'S A GOOD THING, RIGHT, THAT SHE WAS ACCEPTING THE
22 FEEDBACK?

23 **A.** YEAH. FOR THE MOST PART, YEAH. IT IS A QUALITY THAT YOU
24 HAVE TO HAVE. YOU HAVE TO BE ABLE TO ACCEPT FEEDBACK OR
25 YOU'RE NOT GOING TO MAKE IT, RIGHT?

1 Q. AND IN THE REVIEW YOU ALSO NOTED THE INCIDENT THAT
2 MS. NEWTON HAD WITH THE BAKER TANK. THAT'S THE WASH WATER
3 INCIDENT, RIGHT?

4 A. CORRECT.

5 Q. YOU OBSERVED THAT MS. NEWTON HAD COMMITTED TO BEING MORE
6 COMFORT CAREFUL IN THE FUTURE, DIDN'T YOU?

7 A. YES, SHE DID.

8 Q. AND IN THIS -- AND YOU -- AT THAT TIME YOU BELIEVED THAT
9 MS. NEWTON WAS WILLING TO LEARN AND DETERMINED TO LEARN,
10 CORRECT?

11 A. CORRECT.

12 Q. AND YOU REPORTED THAT SHE HAD HONESTY AND INTEGRITY,
13 CORRECT?

14 A. DID I WRITE THAT?

15 Q. YOU DID.

16 A. IT'S THERE.

17 Q. AND, IN FACT, THAT IS SOMETHING THAT YOU ADDED BETWEEN
18 YOUR JUNE 9TH REVIEW OF HER AND THIS JULY 29TH REVIEW,
19 CORRECT?

20 A. I WOULD HAVE ON LOOK BETWEEN THE TWO. BUT IF IT IS, THEN
21 SURE.

22 Q. YOU CAN LOOK?

23 A. DO YOU REMEMBER WHAT THE OTHER EXHIBIT NUMBER WAS?

24 Q. 19.

25 A. YEAH, I WROTE IT.

1 Q. AND NO POINT IN THIS REVIEW AT NO POINT DID YOU INDICATE
2 YOU WERE LOSING SLEEP OVER MS. NEWTON'S JOB PERFORMANCE, DID
3 YOU?

4 A. THAT IS NOT SOMETHING I WOULD SHARE WITH AN OPERATOR.

5 Q. YOU DIDN'T TELL ERIC PEREZ THAT, DID YOU? AT THAT TIME
6 PERIOD?

7 A. YES, I DID.

8 Q. IN JULY, 2006 (SIC), YOU TOLD HIM THAT?

9 A. YES.

10 Q. YOU PUT IT IN WRITING?

11 A. NO. I CALLED ERIC PEREZ AFTER THE BAKER TANK INCIDENT.

12 Q. YOU DIDN'T PUT ANYWHERE IN WRITING IN THE JULY TIME FRAME
13 THAT YOU WERE LOSING SLEEP OVER MS. NEWTON'S JOB PERFORMANCE,
14 DID YOU?

15 A. NO. IT WAS A VERBAL COMMUNICATION.

16 Q. AND AT THE END OF THAT PERFORMANCE REVIEW YOU GAVE TO
17 MS. NEWTON ON JULY 29TH, YOU RECOMMENDED MS. NEWTON CONTINUE
18 AS AN OPERATOR, DIDN'T YOU?

19 A. THERE IS ONLY TWO BOXES. IT'S YOU MAY CONTINUE OR YOU MAY
20 NOT CONTINUE. I DON'T HAVE THE AUTHORITY TO SAY NOT CONTINUE.
21 SO IT'S YES OR NO.

22 SO, YEAH, I WANTED HER TO SUCCEED. I DIDN'T WANT HER TO
23 GO HOME. I WANTED HER TO DO WELL.

24 Q. YOU CHECKED THE BOX THAT SAYS, BASED ON YOUR KNOWLEDGE OF
25 THE EMPLOYEE'S PERFORMANCE TO DATE, SHOULD THE INDIVIDUAL

1 CONTINUE AS AN EQUILON OPERATOR?

2 THAT'S ASKING YOU DO YOU THINK THAT INDIVIDUAL SHOULD
3 CONTINUE.

4 **A.** YES.

5 **Q.** AND YOU CHECKED THE BOX THAT SAID, YES, DIDN'T YOU?

6 **A.** YES.

7 **Q.** AND YOU STOPPED SUPERVISING MS. NEWTON REALLY SHORTLY
8 AFTER YOU COMPLETED THIS REVIEW, CORRECT?

9 **A.** CORRECT. IT WAS A SHORT PERIOD OF TIME.

10 **Q.** NOW, LET'S TALK ABOUT SOME THINGS IN THE WORKPLACE
11 ENVIRONMENT.

12 YOU'VE HEARD MALE EMPLOYEES TALKING ON THE RADIO IN FAKE,
13 HIGH, STEREOTYPICAL FEMALE VOICES, HAVEN'T YOU?

14 **A.** YES.

15 **Q.** YOU'VE HEARD THAT MANY TIMES?

16 **A.** YES. SINCE I WAS A NEW EMPLOYEE.

17 **Q.** AND YOU'VE TOLD PEOPLE TO STOP DOING THAT, HAVEN'T YOU?

18 **A.** CORRECT.

19 **Q.** BECAUSE YOU KNOW THAT THAT COULD BE OFFENSIVE?

20 **A.** CORRECT.

21 **Q.** PEOPLE STOP WHEN THEY TELL THEM TO?

22 **A.** FOR A WHILE, YEAH.

23 **Q.** THEN THEY START DOING IT OVER AGAIN A FEW WEEKS LATER,
24 RIGHT?

25 **A.** FAIR TO SAY, YES.

1 Q. AND PEOPLE MAKE FUN OF YOU FOR TELLING THEM TO KEEP IT
2 APPROPRIATE ON THE RADIO, DON'T THEY?

3 A. I DON'T KNOW IF I WOULD SAY IT QUITE LIKE THAT, BUT A
4 LITTLE BIT OF A RAZZING OR JOKING AROUND, KIDDING AROUND.

5 Q. THEY GIVE YOU A HARD TIME ABOUT IT?

6 A. SURE.

7 Q. AND YOU -- YOU ARE AWARE THAT A STICKER WAS BROUGHT INTO
8 THE REFINERY THAT SAID IF YOUR PUSSY HURTS, JUST STAY HOME?

9 A. I'M AWARE OF THE STICKER, YES.

10 Q. YOU NEVER DID ANYTHING TO FIND OUT IF ANY OF YOUR TEAM
11 MEMBERS HAD BROUGHT THAT STICKER ON TO THE REFINERY?

12 A. IN WHAT REGARDS? WOULD YOU EXPECT ME TO INTERVIEW EVERY
13 PERSON ON MY TEAM? I DON'T THINK IT WAS ANYONE ON MY CREW.

14 Q. DID YOU ASK ANY OF THEM?

15 A. NO.

16 Q. YOU PROVIDED INPUT IN THE DECISION TO TERMINATE
17 MS. NEWTON, DIDN'T YOU?

18 A. YES, I DID.

19 Q. AND YOU TALKED TO JEFF FISCHER ABOUT MS. NEWTON DURING HER
20 EMPLOYMENT?

21 A. SURE.

22 Q. YOU TALKED TO ERIC PEREZ DURING HER EMPLOYMENT?

23 A. YES.

24 Q. AND MIKE BECK ABOUT HER DURING HER EMPLOYMENT?

25 A. CORRECT.

1 Q. DURING THE SAME TIME FRAME THAT MS. NEWTON WAS RAISING
2 CONCERNS ABOUT UNEQUAL TREATMENT, YOU WERE ALSO SUPERVISING AN
3 OPERATOR NAMED JOHN HESS, CORRECT?

4 A. YES.

5 Q. AND WHEN YOU TOLD MR. PEREZ THAT MS. NEWTON TOLD YOU THAT
6 SHE WAS -- THAT SHE THOUGHT SHE WAS BEING TREATED UNFAIRLY,
7 MR. PEREZ POINTED OUT TO YOU THAT YOU WERE ALSO DOCUMENTING
8 JOHN HESS FOR POOR PERFORMANCE, RIGHT?

9 A. CORRECT.

10 Q. AND DURING THAT SAME TIME PERIOD, YOU ACTUALLY GAVE JOHN
11 HESS A WRITTEN WARNING FOR POOR PERFORMANCE, CORRECT?

12 A. ORAL AND WRITTEN, YES. IT IS THE PROGRESSION.

13 Q. YOU GAVE MS. NEWTON COACHINGS, CORRECT?

14 A. CORRECT.

15 Q. SO IN THE PROGRESSIVE DISCIPLINE POLICY, COACHINGS ARE THE
16 LOWEST LEVEL AND THEN -- I AM SORRY. YOU HAVE TO SAY IT
17 VERBALLY.

18 A. COACHING, COUNSELING, ORAL OR WRITTEN DML.

19 Q. SO IT STARTS WITH COACHING. YES?

20 A. CORRECT.

21 Q. AND THAT'S TO IMPROVE PERFORMANCE, CORRECT?

22 A. CORRECT.

23 Q. AND THEN IT MOVES TO COUNSELING, CORRECT?

24 A. CORRECT.

25 Q. THAT'S A LITTLE BIT OF A MORE SERIOUS ISSUE, RIGHT?

1 **A.** IT'S -- YEAH. IT'S A REPEAT, WHETHER IT IS WORK
2 PERFORMANCE OR ATTENDANCE. WE'VE TALKED ABOUT THIS ONCE
3 BEFORE. THERE IS THE COUNSELING. THE COACHING IS, LIKE, HEY,
4 THERE'S A PROBLEM, LET'S DISCUSS IT. WHAT ARE WE GOING TO DO
5 TO GET BETTER?

6 COUNSELING IS IT'S STILL HAPPENING. THIS IS GOING ON.
7 AND IF IT STILL DOESN'T IMPROVE, THEN IT'S GOING TO BE A FORM
8 OF FORMAL DISCIPLINE, WHICH IS AN ORAL REMINDER.

9 **Q.** AND THEN FOLLOWED BY A WRITTEN REMINDER?

10 **A.** CORRECT.

11 **Q.** YOU GAVE JOHN HESS A WRITTEN REMINDER, RIGHT?

12 **A.** MYSELF AND ERIC PEREZ.

13 **Q.** HE HAD ISSUED A PERMIT THAT SHOULDN'T HAVE BEEN ISSUED,
14 CORRECT? THAT WAS ONE OF THE THINGS THAT LED TO THE WRITTEN
15 REMINDER?

16 **A.** NO.

17 **Q.** HE ISSUED A PERMIT TO TURN A BLIND AND DIDN'T CHECK WITH
18 THE LEADER?

19 **A.** FOR HIS ORAL AND HIS WRITTEN REMINDER, I BELIEVE IT WAS --
20 ONE WAS... PUTTING A FILTER BACK IN SERVICE WITH THE VENT LINE
21 OPEN AND THE OTHER ONE WAS OPENING A VALVE ON A BYPASS AROUND
22 A PSV TO THE WRONG PIECE OF EQUIPMENT CAUSING A SIGNIFICANT
23 UPSET.

24 **Q.** SO HE -- ONE OF THE THINGS HE DID WAS HE OPENED THE WRONG
25 VALVE?

1 **A.** CORRECT.

2 **Q.** AND THAT CAUSED A SIGNIFICANT UPSET?

3 **A.** YES.

4 **Q.** AND A SIGNIFICANT UPSET IS WHEN IT CAUSES THE UNIT TO NOT
5 FUNCTION PROPERLY?

6 **A.** CORRECT.

7 **Q.** HE ALSO DID SOMETHING THAT CAUSED A UNIT SHUTDOWN, RIGHT?

8 **A.** CORRECT.

9 **Q.** WHAT DID HE DO TO CAUSE THAT UNIT SHUTDOWN?

10 **A.** DIDN'T PROPERLY SECURE A PIECE OF EQUIPMENT ON THE CONTROL
11 BOARD FOR REPAIRS OR CHECKS AND THE CRAFTS PEOPLE WENT TO
12 PERFORM THEIR REPAIRS AND IT CAUSED A SHUTDOWN.

13 **Q.** AND A UNIT SHUTDOWN IS WHEN THE ENTIRE UNIT HAS TO BE SHUT
14 DOWN?

15 **A.** YES. IT'S AN EMERGENCY FAIL-SAFE SYSTEM THAT ACTIVATES
16 AND BASICALLY TURNS IT OFF.

17 **Q.** HE ALSO MADE A MISTAKE WITH RESPECT TO THE PERMITS?

18 **A.** CORRECT.

19 **Q.** WHAT WAS THAT MISTAKE?

20 **A.** ISSUED A PERMIT FOR A BLIND ON A PIECE OF EQUIPMENT THAT
21 WASN'T READY.

22 **Q.** AND MR. HESS IS STILL EMPLOYED AT THE REFINERY, ISN'T HE?

23 **A.** YES, HE IS.

24 **MS. SMALLETS:** I HAVE NOTHING FURTHER AT THIS TIME,
25 YOUR HONOR.

1 **THE COURT:** CROSS.

2 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

3 **THE COURT:** WILL THIS WITNESS BE COMING BACK?

4 **MR. LAFAYETTE:** THERE IS A POSSIBILITY, YOUR HONOR.

5 I DON'T KNOW AT THIS POINT, YOUR HONOR. YES, HE WILL BE
6 COMING BACK BUT I AM CROSSING HIM NOW.

7 **THE COURT:** LIMITED TO THE SCOPE OF DIRECT.

8 **MR. LAFAYETTE:** YES.

9 **THE COURT:** HE IS YOUR WITNESS AND NO LEADING
10 QUESTIONS.

11 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

12 (BINDER HANDED TO WITNESS.)

13 **THE WITNESS:** EXCUSE ME. DO I USE THE SAME BOOK OR
14 THE NEW BOOK?

15 **MR. LAFAYETTE:** USE THE NEW BOOK.

16 **CROSS-EXAMINATION**

17 **BY MR. LAFAYETTE:**

18 **Q.** I'M GOING TO ASK YOU A FEW QUESTIONS BEFORE I GET STARTED.
19 ON MR. HESS, WAS HE A PROBATIONARY EMPLOYEE?

20 **A.** TALKING ABOUT JOHN HESS?

21 **Q.** YES.

22 **A.** NO.

23 **Q.** WAS HE A UNION EMPLOYEE?

24 **A.** YES, HE WAS.

25 **Q.** AT THIS POINT IN TIME WAS MS. NEWTON IN THE UNION?

1 **A.** NO. PROBATIONARY EMPLOYEES ARE NOT IN THE UNION.

2 **Q.** AND DO YOU KNOW WHETHER OR NOT BEING IN THE UNION MEANT
3 THAT YOU COULD ONLY TERMINATE MR. -- DO YOU KNOW WHAT THE
4 UNION CONTRACT SAYS WITH REGARD TO THE STANDARD FOR
5 TERMINATION OF A UNION EMPLOYEE?

6 **MS. SMALLETS:** OBJECTION.

7 **THE COURT:** THE QUESTION IS, DO YOU KNOW? YES OR NO.

8 **THE WITNESS:** NOT OFF THE TOP OF MY HEAD, I DON'T
9 KNOW. NO.

10 **BY MR. LAFAYETTE:**

11 **Q.** OKAY.

12 DO YOU KNOW IF IT IS A DIFFERENT STANDARD FOR TERMINATING
13 A UNION EMPLOYEE VERSUS A PROBATIONARY EMPLOYEE?

14 **A.** I BELIEVE IT IS.

15 **Q.** NOW, ARE YOU THE PERSON -- DO YOU HAVE AUTHORITY TO
16 TERMINATE PEOPLE AT THE REFINERY?

17 **A.** NO.

18 **Q.** DID YOU HAVE THE AUTHORITY TO TERMINATE MR. HESS?

19 **A.** NO.

20 **Q.** DID YOU HAVE THE AUTHORITY TO TERMINATE MS. NEWTON?

21 **A.** NO.

22 **Q.** SO LET'S GO BACK A LITTLE BIT THEN. OKAY?

23 YOU WERE SHOWN SOMETHING CALLED -- I THINK IT'S EXHIBIT
24 121. YOU WERE NOT ASKED WHAT THAT IS.

25 **MR. LAFAYETTE:** I WOULD LIKE TO PULL UP EXHIBIT 121,

1 YOUR HONOR. I BELIEVE IT IS IN EVIDENCE?

2 **THE COURT:** 121 IS IN EVIDENCE, YES.

3 (DISPLAYED ON SCREEN.)

4 **BY MR. LAFAYETTE:**

5 **Q.** WHAT IS THIS?

6 **A.** THIS IS OUR SHIFT SCHEDULE FOR 2016.

7 **Q.** HOW DO YOU READ THIS?

8 **A.** IT HAS THE MONDAY THROUGH FRIDAY ON THE BOTTOM ROW. IT
9 HAS THE DATES OBVIOUSLY, AND THEN WHAT TEAM IS COVERING, WHAT
10 SHIFT, BE IT DAYS OR NIGHTS. THERE IS A ROW FOR DAYS AND ROW
11 FOR NIGHTS. IT IDENTIFIES WHICH TEAM IS ON.

12 **Q.** SO WHEN WE LOOKED AT YOUR EXHIBIT -- PLAINTIFF'S
13 EXHIBIT 19, AND THAT WAS A DATE PROGRESS REPORT, DO YOU
14 REMEMBER THAT DOCUMENT? CAN YOU TAKE A LOOK AT IT REAL QUICK?

15 (DISPLAYED ON SCREEN.)

16 IN THE WHITE BINDER -- THERE IT IS ON THE SCREEN. DO YOU
17 SEE IT THERE?

18 **A.** YES.

19 **Q.** I WANT YOU TO TAKE A LOOK AT THAT DOCUMENT AND DID YOU
20 FILL THAT OUT ON JUNE 8, 2016? LOOK AT THE TOP FRONT OF IT.

21 **A.** YES.

22 **Q.** HOW MANY SHIFTS HAD MS. NEWTON WORKED ON WITH YOU PRIOR TO
23 THAT?

24 **A.** 14, ACCORDING TO THIS.

25 **Q.** HOW MANY?

1 **A.** 14.

2 **Q.** 14 SHIFTS. SO WHEN YOU WROTE THIS, THERE HAD BEEN 14
3 SHIFTS THAT YOU HAD WORKED WITH HER?

4 **A.** CORRECT.

5 **Q.** NOW, WHERE WERE YOU PRIOR TO WHEN YOU STARTED SUPERVISING
6 HER?

7 **A.** WE WERE ON A TURNAROUND SCHEDULE. WE SHUT DOWN,
8 BASICALLY, THE WHOLE DEPARTMENT FOR, OVER THE PERIOD OF TWO
9 MONTHS, TWO-AND-A-HALF MONTHS. THE UNITS WERE DOWN,
10 BEING REPAIRED, CLEANED OUT. SO WE WERE SHUTTING DOWN DOING
11 TURNAROUND.

12 DURING THAT TIME, MYSELF AND -- I WAS ON NIGHT SHIFTS AS
13 THE SHIFT TEAM LEADER THROUGHOUT THIS, JUST ALL NIGHTS. AND
14 THEY HAD DAY SHIFT SHIFT TEAM LEADER. THERE WAS ALL THE
15 PEOPLE STAFFING THE TURNAROUND WERE ON A STRAIGHT-DAY SCHEDULE
16 OR STRAIGHT-NIGHT SCHEDULE. THEY DIDN'T ROTATE AROUND.

17 THE NEW HP-2 OPERATORS FOLLOWED THEIR TEAM SCHEDULES
18 ROTATING AROUND, SO THEY WERE ROTATING BETWEEN DAYS AND NIGHTS
19 WHILE EVERYBODY ELSE STAYED STATIONARY ON STRAIGHT DAYS OR
20 STRAIGHT NIGHTS.

21 **Q.** LET ME SEE IF I UNDERSTAND IT. YOU WERE WORKING STRAIGHT
22 NIGHTS?

23 **A.** CORRECT.

24 **Q.** DURING THE TURNAROUND?

25 **A.** CORRECT. UNTIL WE CAME BACK ABOUT THE END OF MAY, EARLY

1 JUNE ROTATED -- I TRANSITIONED BACK -- TRANSITIONED BACK INTO
2 TEAM FOUR.

3 Q. TEAM FOUR, WHICH WAS YOUR TEAM. WERE THEY WORKING
4 STRAIGHT NIGHTS AS WELL OR WERE THEY WORKING SOMETHING
5 DIFFERENT?

6 A. ALL OVER. SOME ON DAYS AND SOME ON NIGHTS. AND CIARA
7 ROTATING THROUGH.

8 Q. SO FOR THE MONTH OF JUNE WHEN YOU COME BACK, CAN YOU TELL
9 ME HOW MANY SHIFTS YOU WORKED WITH MS. NEWTON THAT MONTH?

10 A. FOR THE FULL MONTH? IT PROBABLY WOULD HAVE BEEN ABOUT 14.

11 Q. 14 SHIFTS THAT MONTH.

12 ALL RIGHT. WERE THEY ALL DAYS OR WERE THEY ROTATING?

13 A. ROTATING.

14 Q. SO WHEN YOU SAY "ROTATING", WHAT DO YOU MEAN?

15 A. WORK A COMBINATION OF DAYS AND NIGHTS. WE START OFF WITH
16 FOUR NIGHTS AND THEN WE WORK THREE DAYS, AND THEN WE WORK
17 THREE NIGHTS AND THEN WE WORK FOUR DAYS. SO YOU END UP
18 WORKING ALL SEVEN DAYS OF A WEEK IN DAY SHIFTS OR NIGHT
19 SHIFTS. WE GO BACK AND FORTH.

20 Q. IS THAT HARD?

21 A. EXTREMELY HARD.

22 Q. AND SO DURING THAT FIRST MONTH OF JUNE, HOW MUCH TIME DID
23 YOU SPEND WITH MS. NEWTON?

24 A. DURING THE MONTH OF JUNE? I CAN'T REMEMBER.

25 Q. OKAY. DID YOU TRY TO HELP HER LEARN THE UNIT?

1 **A.** I DID.

2 **Q.** SO NOW --

3 **THE COURT:** IT SOUNDS LIKE YOU ARE SHIFTING.

4 **MR. LAFAYETTE:** SORRY.

5 **THE COURT:** ARE YOU SHIFTING YOUR QUESTIONS?

6 **MR. LAFAYETTE:** YES, YOUR HONOR.

7 **THE COURT:** LET'S GO AHEAD AND TAKE OUR FIRST BREAK,
8 LADIES AND GENTLEMEN. WE WILL STAND IN RECESS FOR 15 MINUTES.

9 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

10 **THE COURT:** ALL RIGHT. THE RECORD WILL REFLECT THE
11 JURY HAS LEFT THE COURTROOM. 15 MINUTES.

12 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

13 (RECESS TAKEN AT 10:03 A.M.; RESUMED AT 10:15 A.M.)

14 **THE CLERK:** REMAIN SEATED. COURT IS IN SESSION.
15 COME TO ORDER.

16 **THE COURT:** ALL RIGHT. LET'S CALL THEM BACK IN.

17 (PROCEEDINGS HELD IN THE PRESENCE OF THE JURY.)

18 **THE COURT:** ALL RIGHT. THE RECORD WILL REFLECT THE
19 JURY IS BACK. HOW ARE YOU DOING ON SNACKS BACK THERE?

20 **JUROR:** GOOD.

21 **THE COURT:** STILL OKAY?

22 **JUROR:** PIZZA WOULD BE A GOOD THING.

23 **THE COURT:** YOU GET SANDWICHES DURING DELIBERATIONS.
24 I TRY NOT TO BRING ANYTHING TOO GOOD BECAUSE I DON'T WANT YOU
25 TO STAY THAT LONG. JUST LONG ENOUGH TO DO YOUR JOB.

1 YOU MAY PROCEED.

2 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

3 **BY MR. LAFAYETTE:**

4 **Q.** I WOULD LIKE YOU TO TAKE A LOOK AT EXHIBIT 83 IN THE WHITE
5 BINDER.

6 DO YOU RECOGNIZE EXHIBIT 83?

7 **A.** YES.

8 **Q.** WHAT IS THAT?

9 **A.** IT'S A PD LOG.

10 **Q.** FOR WHOM?

11 **A.** CIARA NEWTON.

12 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE EXHIBIT 83 INTO
13 EVIDENCE, YOUR HONOR.

14 **THE COURT:** ANY OBJECTION?

15 **MS. SMALLETS:** NO, YOUR HONOR.

16 **THE COURT:** 83 IS ADMITTED.

17 (PLAINTIFF'S EXHIBIT 83 RECEIVED IN EVIDENCE)

18 (DISPLAYED ON SCREEN.)

19 **BY MR. LAFAYETTE:**

20 **Q.** CAN YOU TELL ME WHERE IT IS ON EXHIBIT 83 THAT YOU MAKE
21 YOUR FIRST ENTRY ON THIS PD LOG?

22 **A.** THE SECOND PAGE.

23 **Q.** THE SECOND PAGE. AND WHAT IS THAT IN CONNECTION WITH?

24 **MS. SMALLETS:** OBJECTION, BEYOND THE SCOPE.

25 **THE COURT:** I CAN'T HEAR YOU.

2 **THE COURT:** IT IS BEYOND THE SCOPE. YOU'RE BRINGING
3 HIM BACK, RIGHT?

4 **MR. LAFAYETTE:** YES. I'LL GO TO EXHIBIT -- SAME
5 EXHIBIT. PLAINTIFF REFERENCED IT --

6 **THE COURT:** I KNOW SHE REFERENCED IT. SHE ONLY
7 REFERENCED PARTICULAR THINGS.

9 THE COURT: ALL RIGHT.

12 || **A.** CORRECT. YES.

14 **A.** YES.

16 **A.** YES, I DID.

18 **THE COURT:** ARE WE GOING TO GET THE JURY TO THE RIGHT

19 PAGE?

21 THERE YOU GO. THANK YOU.

23 BY MR. LAFAYETTE:

24 **A.** I BELIEVE 7/17. IT COULD HAVE BEEN 7/16. SOMETIMES WE
25 ARE ON NIGHT SHIFT. I CAN'T REMEMBER IF WE DID IT ON THE DAY

1 WE STARTED OR --

2 Q. THIS IS NOTED AS A COACHING, RIGHT?

3 A. YES, IT IS.

4 Q. WHAT IS A COACHING?

5 A. A COACHING IS AN OBSERVATION, A COMMENT, FEEDBACK
6 DOCUMENTED IN HELPS OF IMPROVING PERFORMANCE.

7 Q. OKAY.

8 A. IT CAN BE POSITIVE OR NEGATIVE. IT'S JUST SOMETHING THAT
9 HAPPENED.

10 Q. IS WHAT'S SAID HERE AN ACCURATE STATEMENT OF WHAT
11 HAPPENED?

12 A. YES.

13 Q. CAN YOU READ IT, PLEASE?

14 A. (READING)

15 CIARA CAME INTO THE STL OFFICE AND INFORMED ME THAT SHE
16 OPENED THE WRONG VALVE. I ASKED HER WHICH ONE, AND SHE TOLD
17 ME IT WAS THE POTASSIUM TANK IN THE GRAVEL.

18 I ASKED HER IF SHE WAS OKAY, AND SHE SAID YES. I ASKED
19 HER HOW BIG THE LEAK WAS, AND SHE SAID IT WAS SMALL. I ASKED
20 HER IF IT WAS THIS BIG, SHOWING MY ARMS ABOUT THE SIZE OF A
21 BASKETBALL, AND SHE SAID IT'S SMALL. I ASKED HER IF IT WAS AS
22 BIG AS AT THE STL OFFICE, AND SHE SAID NO. I ASKED HER IF SHE
23 CLOSED THE VALVE. SHE SAID YES. I SAID OKAY, IT'S NO BIG
24 DEAL.

25 I WENT OUTSIDE ABOUT A HALF AN HOUR LATER AND LOOKED.

1 THERE WAS A PUDDLE IN THE CONTAINMENT AREA THAT WAS
2 CONSIDERABLY BIGGER THAN WHAT I HAD EXPECTED. PROBABLY SIX OR
3 SEVEN GALLONS. I CALLED HER OUT AND ASKED HER TO SHOW ME THE
4 VALVE SHE OPENED, AND SHE SHOWED ME THE 2-INCH BUTTERFLY VALVE
5 ON THE WEST SIDE OF THE BAKER TANK. I TOLD HER --

6 **COURT REPORTER:** EXCUSE ME. WAIT.

7 **THE WITNESS:** YEAH. SORRY.

8 **COURT REPORTER:** THE BUTTERFLY VALVE ON THE --

9 **THE WITNESS:** WEST SIDE OF THE BAKER TANK.

10 **COURT REPORTER:** THANK YOU.

11 **BY MR. LAFAYETTE:**

12 **Q.** GO AHEAD.

13 **A.** (READING)

14 I TOLD HER THERE WAS MORE WATER IN THE CONTAINMENT AREA
15 THAN I THOUGHT, AND SHE TOLD ME THAT DONNIE TOLD HER HE WAS
16 WALKING BY AND SAW THE VALVE WAS NOT CLOSED ALL THE WAY AND IT
17 WAS LEAKING, SO HE CLOSED IT.

18 **Q.** STOP THERE FOR A SECOND.

19 WHEN SHE TOLD YOU INITIALLY ABOUT THIS BAKER TANK AND HER
20 TURNING THE WRONG VALVE, DID SHE TELL YOU THAT SHE HAD NOT
21 CLOSED IT ALL THE WAY?

22 **A.** NO.

23 **Q.** WAS THE FIRST TIME YOU REALIZED -- WHEN WAS THE FIRST TIME
24 YOU REALIZED THAT SHE HAD NOT CLOSED IT ALL THE WAY?

25 **A.** WHEN SHE TOLD ME.

1 Q. AFTER YOU WENT OUT?

2 A. AFTER I WENT OUTSIDE, YES.

3 Q. KEEP READING.

4 A. (READING)

5 SO I TOLD CIARA I WAS CONCERNED ABOUT THE FACT THAT SHE
6 OPENED THE VALVE WITHOUT SEEING THAT IT WAS CONNECTED TO
7 ANYTHING. SHE SAID SHE WAS USED TO OPENING UP THE VALVE AND
8 JUST DID IT. SHE SAID SHE WAS TIRED AND DIDN'T THINK ABOUT
9 WHAT SHE WAS DOING. I TOLD HER IT WAS CRITICAL TO ALWAYS
10 THINK ABOUT WHAT WILL HAPPEN WHEN YOU MAKE A MOVE IN THE UNIT
11 AND, IF YOU DON'T UNDERSTAND TO ASK QUESTIONS. AND SHE
12 AGREED. CIARA SAID SHE WOULD PAY ATTENTION TO WHAT SHE WAS
13 DOING AT ALL TIMES.

14 Q. ALL RIGHT. WAS THAT A PROPER THING TO PUT IN -- AS A
15 COACHING IN HER FILE?

16 A. YES.

17 Q. DID YOU DO THAT BECAUSE SHE HAD RAISED WITH YOU ISSUES
18 CONCERNING ACID?

19 A. NO.

20 Q. NOW I WOULD LIKE FOR YOU TO TAKE A LOOK AT PAGE 167 OF
21 THAT SAME EXHIBIT. DO YOU HAVE IT THERE?

22 A. YES.

23 Q. THERE'S AN ENTRY THERE ON 7/18/16. DO YOU SEE THAT?

24 A. YES.

25 Q. OKAY. I THINK THIS GOES OVER TO TWO PAGES, BUT LET'S PULL

1 THAT UP. OKAY? DO YOU REMEMBER THIS INCIDENTS?

2 A. YES, I DO.

3 Q. WHY DON'T YOU TELL US WHAT HAPPENED IN THAT INCIDENT?

4 A. TO SAY WHAT HAPPENED OR READ IT?

5 Q. TELL ME.

6 A. ALL RIGHT.

7 SO I CLEANED UP A MESS AT A SAMPLE STATION THAT WE HAVE
8 OUT THERE. IT'S A COMMON THING I DO, PICKING UP THINGS WHEN I
9 SEE IT. AND CLEANED EVERYTHING UP.

10 THERE'S TWO NEW BOXES OF SAMPLING TUBES OUT THERE. AND
11 THEN A COUPLE OF NIGHTS LATER WHEN I WALKED BY, I NOTICED THAT
12 THE SAMPLE TUBE BOXES WERE UNOPENED. AND I ASKED CIARA ABOUT
13 IT, WHY -- WHERE IS SHE GETTING HER SAMPLE FROM, AND SHE SAID
14 SHE FOUND A TUBE ON THE GROUND. I ASKED HER WHERE'S IT AT?
15 SHE LOOKED AROUND AND COULDN'T PRODUCE THE TUBE. SO I BELIEVE
16 SHE WASN'T TAKING THAT SAMPLE.

17 Q. NOW, THIS SAMPLE THAT SHE TAKES, IS SHE SUPPOSED TO ENTER
18 IT SOMEPLACE?

19 A. YES. WE HAVE A SHEET THAT WE RECORD THE SAMPLE RESULTS
20 ONTO.

21 Q. HAD SHE BEEN RECORDING ENTRIES IN THE SHEET?

22 A. YES.

23 Q. NOW, AND HAD SHE RECORDED AN ENTRY IN THE SHEET FOR THIS
24 PARTICULAR DAY?

25 A. YES.

1 Q. AND ON THIS DAY, DID SHE GIVE YOU THE SAMPLE TUBE THAT SHE
2 USED?

3 A. NO.

4 Q. NOW, YOU USED THE TERM SAMPLE TUBE. IS THAT THE SAME AS A
5 DRAEGER TUBE?

6 A. SAMPLE TUBE, DRAEGER TUBE, GASTEC TUBE. SAME THING.

7 Q. WERE YOU CONCERNED ABOUT THAT?

8 A. YES.

9 Q. EXPLAIN WHY.

10 A. IF WE HAVE THE GAS PRESENT IN THAT PART OF THE PLANT, IT'S
11 GOING TO DESTROY OUR HEATER. IT PLUGS IT UP AND DESTROYS THE
12 CATALYST. I'M TALKING ABOUT 4-FOOT STORY BUILDING FULL OF
13 CATALYST THAT'S GOING TO NEED TO BE REPLACED IF WE PLUG IT UP
14 AND DESTROY IT.

15 Q. IS THERE ANY REASON YOU CAN THINK OF WHY YOU WOULDN'T
16 COACH HER ON THAT?

17 A. NO.

18 Q. WAS THERE ANY REASON WHY YOU WOULDN'T PUT IT IN HER PD
19 LOG?

20 A. NO.

21 Q. NOW YOU CAN READ WHAT YOU WROTE, PLEASE.

22 MS. SMALLETS: OBJECTION. BEST EVIDENCE.

23 THE COURT: OVERRULED. YOU ARE BOTH ON TIME LIMITS.
24 I EXPECT THAT YOU WILL BE ONLY USING THE BEST EVIDENCE THAT
25 YOU BELIEVE WORKS FOR YOUR CASE. I DON'T FIND THAT A

1 PARTICULARLY GOOD OBJECTION FROM EITHER SIDE.

2 OVERRULED.

3 **BY MR. LAFAYETTE:**

4 **Q.** GO AHEAD.

5 **A.** (READING)

6 IT SAYS, TONIGHT I NOTICED THAT THE GASTEC TUBES THAT ARE
7 USED TO TAKE SAMPLES ON THE COLUMN 225 INLET AND OUTLET WERE
8 NOT BEING USED. I CLEANED THE AREA ON 7/17 AND PLACED TWO NEW
9 BOXES OUT WHICH NOW, TWO SHIFTS LATER, DIDN'T HAVE ANY MISSING
10 TUBES. I ASKED CIARA TO SHOW ME WHERE SHE GETS THE GASTEC
11 TUBES FOR HER SAMPLES. SHE TOOK ME TO THE SAMPLE POINT AND
12 LOOKED AROUND. SHE SAID THEY'RE USUALLY ON THE GROUND. I
13 PICKED UP THE ONES ON THE GROUND TWO SHIFTS BEFORE, ON 7/17.
14 I ASKED WHERE SHE GOT HER GASTEC TUBES FOR TONIGHT'S SAMPLE,
15 AND SHE TOLD ME SHE USED THE BROKEN ONE SHE FOUND ON THE
16 GROUND BY THE HP-2 SHELTER. I ASKED HER IF SHE USED THE USED
17 ONE, AND SHE SAID SHE USED THE BROKEN ONE. I ASKED HER IF SHE
18 KNEW WHERE TO GET THE NEW TUBES, AND SHE TOLD ME IN THE
19 CONTROL CENTER. I ASKED HER IF SHE KNEW WHY WE TAKE THE
20 SAMPLE AND WHAT CONSEQUENCES ARE OF SENDING H2S TO F104. SHE
21 DIDN'T KNOW, AND I EXPLAINED TO HER THAT THE CATALYST WILL
22 PLUG CAUSING A SHUTDOWN. I TOLD HER IT IS IMPORTANT TO TAKE
23 THE SAMPLE EVERY NIGHT SHIFT AND USE A FRESH GASTEC TUBE AND
24 NOT USE BROKEN ONES FROM THE GROUND.

25 **Q.** NOW, DO YOU -- IS THERE A RISK IN USING ONE WHERE ONE END

1 HAS ALREADY BEEN BROKEN OFF?

2 **A.** I DON'T KNOW. IF THEY GET CONTAMINATED, IT IS BEST TO USE
3 A NEW ONE.

4 **Q.** NOW, YOU WERE SHOWN THE EXHIBIT 1 -- EXHIBIT 99.

5 **MR. LAFAYETTE:** CAN YOU PULL EXHIBIT 99 UP AGAIN,
6 PLEASE?

7 **BY MR. LAFAYETTE:**

8 **Q.** DO YOU HAVE IT IN FRONT OF YOU?

9 **A.** YES.

10 **Q.** TAKE YOU TO PAGE 1600.

11 (DISPLAYED ON SCREEN.)

12 **A.** OKAY.

13 **Q.** IS THAT THE SECTION USE OF DRAEGER PUMP, IS THAT THE SAME
14 AS A DRAEGER TUBE?

15 **A.** THE PUMP IS PART OF IT. THE PUMP IS THE TOOL YOU USE TO
16 DRAW THE GAS THROUGH THE TUBE.

17 **Q.** SAYS ITEM 3, BEFORE USING A DRAEGER GASTEC TUBE, TEST IT
18 FOR TIGHTNESS USING AN UNOPENED TUBE.

19 FROM WHAT MS. CIARA NEWTON TOLD YOU, HAD SHE USED AN
20 UNOPENED TUBE?

21 **MS. SMALLETS:** OBJECTION, LEADING.

22 **THE COURT:** OVERRULED.

23 **THE WITNESS:** NO.

24 **BY MR. LAFAYETTE:**

25 **Q.** NOW, ZERO SIXTY REPORTS. YOU PREPARED -- I THINK YOU SAID

A. YES, IT IS.

1 Q. EXPLAIN WHY YOU WROTE IT THIS WAY HERE.

2 A. I DIDN'T WANT TO DRAW ATTENTION TO THE OPERATOR THAT DID
3 THIS TO CIARA. I WANTED TO -- IT WOULD LOOK BAD TO SAY TO
4 EVERYBODY IN THE REFINERY THAT AN OPERATOR OPENED UP A VALVE
5 CONNECTED TO NOTHING.

6 Q. ALL RIGHT.

7 SO NOW, GOING BACK TO THIS ACID SPILL, OKAY? ON THE ACID
8 SPILL, DID IT TAKE PLACE ON YOUR SHIFT?

9 A. NO, IT DID NOT.

10 Q. WHICH SHIFT TEAM LEADER WOULD HAVE BEEN RESPONSIBLE FOR
11 PREPARING A ZERO SIXTY REPORT FOR THE ACID SPILL?

12 A. DONNIE GOFF.

13 Q. WHO?

14 A. DONNIE GOFF.

15 Q. THANK YOU.

16 SO NOW, LET'S TALK ABOUT WHAT YOU WERE AWARE OF THAT DAY
17 WHEN YOU CAME IN.

18 DO YOU HAVE AN UNDERSTANDING AS TO HOW MANY DAYS HAD PAST
19 FROM THE DATE OF THE ACID SPILL UNTIL YOUR AWARENESS OF IT?

20 A. NOT EXACTLY, BUT I HAVE A GOOD ESTIMATE, YEAH.

21 Q. WHAT'S THAT?

22 A. FRIDAY DAY SHIFT, THE PREVIOUS DAY. SO WHEN I WAS AWARE
23 OF IT, IT WAS ON A MONDAY. SO IT WOULD HAVE BEEN FRIDAY,
24 SATURDAY AND SUNDAY.

25 Q. HOW DID YOU BECOME AWARE OF IT?

1 **A.** I HAD A PHONE CALL FROM THE TRUCKING COMPANY OR CHEMICAL
2 SUPPLY COMPANY. I CAN'T REMEMBER WHICH ONE, ASKING ME IF I
3 KNEW ABOUT IT, ASKING QUESTIONS AND MAKING SURE EVERYTHING WAS
4 OKAY.

5 **Q.** PRIOR TO THAT PHONE CALL, HAD MS. CIARA NEWTON COME TO YOU
6 AND SAID ANYTHING ABOUT AN ACID SPILL?

7 **MS. SMALLETS:** OBJECTION. LEADING.

8 **THE COURT:** OVERRULED.

9 **THE WITNESS:** NO.

10 **BY MR. LAFAYETTE:**

11 **Q.** ONCE YOU BECAME AWARE OF THE ACID SPILL, WHAT DID YOU DO?

12 **A.** I LOOKED THROUGH MY SHIFT REPORTS AND -- MY SHIFT TEAM
13 LEADERSHIP REPORTS ON THE DESK WHEN I WAS ON THE PHONE WITH
14 THE PERSON. AND WHEN I GOT OFF THE PHONE, I WENT OUTSIDE AND
15 TOOK A LOOK.

16 AND THEN WHEN I CAME BACK, I LOOKED THROUGH THE SHIFT
17 REPORTS ON THE COMPUTER FOR THE HP-2 OPERATOR JOB TO SEE IF
18 THERE WAS ANY... ANYTHING WRITTEN ABOUT IT.

19 **Q.** WHEN YOU WENT OUTSIDE AND YOU LOOKED AT THE LOCATION OF
20 THE ACID TANK, WHAT DID YOU OBSERVE?

21 **A.** IT LOOKED NORMAL. JUST THERE'S A LITTLE SPOT. WE KEEP
22 OYSTER SHELLS UNDERNEATH THE TANK. IT IS SIMILAR TO LIKE A
23 KITTY LITTER. I CAN SEE A SPOT WHERE IT HAD BEEN WET, ALMOST
24 DISSOLVES IT. TURNS IT INTO LIKE A GLUE, LIKE USED KITTY
25 LITTER. IT'S THE BEST WAY I CAN EXPLAIN IT.

1 I COULD SEE THE EVIDENCE OF A PREVIOUS SPILL PER SE, BUT
2 THERE WASN'T ANYTHING ELSE GOING ON OUT THERE.

3 Q. DID YOU SEE ANYTHING THAT LOOKED LIKE IT STILL REPRESENTED
4 A RISK OF SAFETY TO ANYONE?

5 A. NO.

6 MS. SMALLETS: OBJECTION, LEADING.

7 THE COURT: THAT WAS LEADING, BUT HE ALREADY
8 ANSWERED.

9 BY MR. LAFAYETTE:

10 Q. DID YOU -- CAN YOU DESCRIBE GENERALLY WHAT THIS ACID TANK
11 LOOKS LIKE?

12 A. SURE.

13 THE ACID TANK IS A HORIZONTAL CYLINDER SIMILAR TO WHAT
14 PEOPLE WOULD STORE THEIR PROPANE GAS IN A CABIN UP IN THE
15 MOUNTAINS BUT A LITTLE BIT BIGGER. AND IT SITS ABOUT 15 FEET
16 OVERHEAD ON A STEEL STRUCTURE TO SUPPORT IT, LIKE STILTS TO
17 HOLD IT UP IN THE AIR. WE USE THE GRAVITY TO FEED THE ACID
18 INTO OUR CLEAN WATER TOWER. AT THE BASE, IT HAS A RAISED
19 CONCRETE CURB AROUND IT AS A CONTAINMENT AREA.

20 Q. AND HOW TALL IS THIS CONCRETE -- CONCRETE CURB THAT IS
21 AROUND IT?

22 A. BEST GUESS IS 18 INCHES.

23 Q. DO YOU KNOW WHY THAT CURB EXISTS AROUND IT?

24 A. YES. IT IS TO CONTAIN SPILLS.

25 Q. AND SO WITHIN THE CONCRETE BUNKER, IS THERE ANYTHING

1 THERE?

2 **A.** YES. WE KEEP OYSTER SHELLS IN THERE.

3 **Q.** WHY OYSTER SHELLS?

4 **A.** THEY ARE A HIGHER PH MATERIAL AND THEY NEUTRALIZE ANY ACID
5 SPILLS. THEY BRING THE PH -- THE PH OF ACID IS LOW, VERY,
6 VERY LOW, AND IT BRINGS THE PH BACK UP TO A NORMAL PH SO IT'S
7 NOT HAZARDOUS. IT NEUTRALIZES IT.

8 **Q.** IS THERE A PLACE ON THIS TANK WHERE YOU CAN FILL IT?
9 WHERE YOU CAN PUT THE ACID IN?

10 **A.** YES, THERE IS.

11 **Q.** WHERE IS THAT LOCATED?

12 **A.** AT GRADE, ON THE GROUND. WEST OF THE TANK.

13 **Q.** AT GRADE ON THE GROUND?

14 **A.** CORRECT.

15 **Q.** OKAY.

16 AND SO IS THERE SOMETHING THERE AT THAT LOCATION AT GRADE
17 ON THE GROUND THAT IS DESIGNED TO PROTECT AGAINST SPILLS?

18 **A.** THERE'S A SAFETY SHOWER. THERE IS A DRAIN THAT'S FILLED
19 WITH BRICKS THAT LEADS TO OUR PROCESS SEWER, AND WE KEEP THE
20 VALVE CLOSED. SO IF THE SPILL WERE TO GET HIGH ENOUGH, IT
21 WOULD OVERFILL DOWN INTO THE SEWER. BUT THAT VALVE IS KEPT
22 CLOSED. IF WE WERE TO HAVE A SPILL BIG ENOUGH, IT WOULD
23 CONTAIN IT INSIDE OF THERE.

24 **Q.** WHERE WERE -- GO AHEAD.

25 **A.** THERE IS ALSO A LEVEL TRANSMITTER, A LEVEL READING AT THE

1 FILL STATION WHERE YOU FILL IT UP SO YOU CAN SEE THE LEVEL OF
2 THE TANK.

3 Q. WHERE YOU CONNECT THE HOSE TO INPUT THE ACID, IS THERE A
4 MECHANISM THERE TO CATCH WHATEVER COMES OVER IF THERE IS A
5 SPILL IF THERE IS AN OVERFILL?

6 A. YES. WHEN YOU OVERFILL THE TANK, IT IS DESIGNED TO COME
7 OUT A PIPE DOWN TO THE GROUND UNDERNEATH IN THE CONTAINMENT
8 AREA.

9 Q. IN THE CONTAINMENT AREA?

10 A. IT'S DESIGNED THAT WAY.

11 Q. SO WHEN YOU WENT OUT TO LOOK AT THE -- AT WHATEVER THERE
12 WAS, DID YOU LOOK AT THAT AREA?

13 A. YES.

14 Q. AND WHAT DID YOU SEE THERE?

15 A. OYSTER SHELLS AND WHAT LOOKS LIKE IT COULD HAVE BEEN A
16 PUDDLE PREVIOUSLY. BUT IT WASN'T -- NOT A PUDDLE BUT A
17 DRIED -- IT KIND OF DISSOLVES IT LIKE SMOOTH, NOT AS BIG A
18 TEXTURE, OYSTER SHELLS.

19 Q. SO NOW IF YOU HAD SEEN SOMETHING THAT WAS STILL DANGEROUS
20 AT THAT POINT IN TIME, WHAT WOULD YOU HAVE DONE?

21 A. WHATEVER THE APPROPRIATE ACTION WOULD HAVE BEEN, WHETHER
22 CALL THE REFINERY SAFETY LEADER -- HE'S BASICALLY THE FIRE
23 CHIEF FOR THE REFINERY ON SHIFT, OR GET OYSTER SHELLS AND
24 NEUTRALIZE IT, DEPENDING ON HOW BIG A THREAT WE WERE DEALING
25 WITH.

1 Q. NOW, AFTER THAT HAPPENED, AFTER YOU WENT OUT AND INSPECTED
2 IT AND AFTER YOU -- DID YOU CALL SOMEONE ON THE PHONE? YOU
3 SAID -- I THINK YOU SAID YOU CALLED THE SHIFT OPERATOR WHO IS
4 ON SHIFT?

5 A. YES. I TRIED TO CALL THE SHIFT TEAM LEADER. HE DIDN'T
6 ANSWER HIS PHONE. SO I CALLED THE OPERATOR WHO WOULD HAVE
7 BEEN ON SHIFT DURING THOSE DATES.

8 Q. DID YOU TALK TO HIM?

9 A. I DID.

10 Q. DID YOU ASK HIM WHAT ACTION HAD BEEN TAKEN THE NIGHT OF
11 THE SPILL?

12 A. YES.

13 Q. WHAT DID HE SAY TO YOU?

14 A. HE SAID THEY PUT OYSTER SHELLS ON IT.

15 Q. DID YOU HAVE ANY REASON -- DID YOU REACH AN UNDERSTANDING
16 IN YOUR OWN MIND AS TO WHETHER OR NOT IT HAD BEEN PROPERLY
17 HANDLED?

18 A. I DID.

19 Q. AND WHAT WAS THAT?

20 A. THAT IT WAS FINE.

21 Q. OKAY. NOW, AFTER YOU DID ALL OF THAT, DID YOU HAVE A
22 CONVERSATION WITH CIARA NEWTON?

23 A. NO.

24 Q. WHEN DID YOU WIND UP HAVING A CONVERSATION WITH CIARA
25 NEWTON RELATIVE TO THE THINGS THAT YOU TOLD ME THAT YOU DID?

1 **A.** THE NEXT DAY AT THE END OF THE SHIFT.

2 **Q.** THE NEXT DAY AT THE END OF THE SHIFT?

3 **A.** CORRECT.

4 **Q.** IS IT -- AT THAT POINT HOW MANY DAYS HAD PASSED SINCE THE
5 OVERFILL HAD TAKEN PLACE?

6 **THE COURT:** KEEP THAT MICROPHONE NEXT TO YOU.

7 **MR. LAFAYETTE:** I AM SORRY.

8 **THE WITNESS:** I BELIEVE FIVE DAYS.

9 **BY MR. LAFAYETTE:**

10 **Q.** HOW MANY?

11 **A.** FRIDAY, SATURDAY, SUNDAY, MONDAY, AND TUESDAY, FIVE DAYS.

12 **Q.** IN YOUR MIND WAS THERE AT THAT MOMENT IN TIME ANY RISK
13 THAT ANYBODY COULD BE HARMED BY THIS ACID OVERFILL?

14 **MS. SMALLETS:** OBJECTION, LEADING.

15 **THE COURT:** SUSTAINED.

16 **BY MR. LAFAYETTE:**

17 **Q.** DID YOU HAVE AN OPINION -- FIVE DAYS LATER, WHAT WAS YOUR
18 OPINION AS TO THE STATUS OF THE ACID FROM THE OVERFILL?

19 **A.** THE AREA AROUND THE TANK. THE TANK IS ITSELF IS FINE.

20 **Q.** SO YOU HAD A CONVERSATION ON THAT DAY WITH MS. NEWTON.
21 CAN YOU EXPLAIN THAT CONVERSATION TO US, PLEASE?

22 **A.** YES. I WAS READING THE SHIFT REPORTS AT THE END OF THE
23 SHIFT AND SAW THAT SHE HAD NOTATED THAT THERE WAS AN ACID LEAK
24 AT THE CLEAN WATER TOWER.

25 SO I ASKED HER, HEY, IS THERE AN ACID LEAK OUT HERE?

1 WHAT'S GOING ON? I DIDN'T HEAR ANYTHING. AND SHE EXPLAINED
2 THAT SHE HAD HEARD THAT THEY HAD OVERFILLED THE TANK.

3 AT THAT POINT I EXPLAINED TO HER THAT, HEY, WE DON'T KNOW
4 WHAT HAPPENED HERE. THIS TEAM IS COMING ON TONIGHT TO RELIEVE
5 US. LET'S TALK TO THEM AND FIND OUT WHAT HAPPENED.

6 AND WHEN YOU SEE THINGS OUT IN THE UNIT THAT ARE OUT OF
7 PLACE, THAT AREN'T RIGHT, THAT SOMETHING THAT YOU KNOW AN
8 OPERATOR DID AND IT'S NOT AN IMPENDING EMERGENCY THAT YOU NEED
9 TO TAKE CARE OF, IT'S BETTER TO HAVE A FACE-TO-FACE
10 CONVERSATION WITH THE OPERATOR TO FIND OUT WHAT HAPPENED AS
11 OPPOSED TO JUST WRITING IN THE SHIFT REPORT WHERE EVERYONE CAN
12 SEE IT. YOU CAN GET A REPUTATION AS A TATTLETALE OR A RAT IF
13 YOU DO THAT.

14 Q. DID YOU TELL HER TO TAKE IT OUT OF THE REPORT?

15 A. I DID NOT.

16 Q. ALL RIGHT.

17 NOW, AFTER THAT CONVERSATION WITH HER -- WELL, WHAT WAS
18 HER REACTION IN THE CONVERSATION?

19 A. I DON'T WANT TO SAY SHE AGREED BUT THERE WAS NO CONTEST.
20 THAT WAS JUST THE END OF IT.

21 Q. DID YOU HAVE ANY OTHER CONVERSATIONS WITH HER AFTER THAT
22 ABOUT THE ACID SPILL?

23 A. THAT SHIFT, NO.

24 Q. OKAY. SO --

25 A. AND --

1 Q. GO AHEAD.

2 A. THE NEXT SHIFT AFTER THE STARTER SHIFT MEETING, WE WENT
3 OUTSIDE. I WENT OUTSIDE WITH CIARA TO ASSIST SOME WITH
4 PERMITS FOR WORK GOING ON IN THE UNIT. I LOOKED OVER AND SHE
5 WAS VISIBLY UPSET OR DISTURBED. SOMETHING WAS WRONG. AND I
6 ASKED HER WHAT WAS -- WHAT'S THE MATTER? WHAT IS HAPPENING?

7 SHE WAS LOOKING ACROSS THE STREET TOWARDS THE ACID TANK,
8 AND SHE POINTED AND SAID THE ACID, THE ACID. I SAID, WHAT IS
9 GOING ON? IS SOMETHING HAPPENING OVER THERE? AND THERE WAS A
10 PERSON -- IT'S A PARKING LOT AREA. AND THERE WAS A PERSON
11 HANGING OUT BY THEIR TRUCK WAITING FOR SOMETHING. AND I
12 DIDN'T UNDERSTAND WHAT THE THREAT WAS.

13 SO WE WALKED ACROSS THE STREET OVER TO THERE AND LOOKED AT
14 THE TANK AREA AND, LIKE, WHAT'S THE PROBLEM HERE? AND SHE'S
15 LIKE THEY OVERFILLED THE TANK. THERE IS ACID IN HERE. I TOLD
16 HER IT HAS BEEN NEUTRALIZED. THERE ARE OYSTER SHELLS IN HERE,
17 THEY'RE NEUTRALIZED. THERE'S NOTHING SCARY IN HERE. IT'S
18 OKAY.

19 AT THIS POINT I HAD TO LEAVE TO MY NEXT MEETING, A
20 PRODUCTION MEETING. I SAID I WILL SHOW YOU WHERE TO GET THE
21 OYSTER SHELLS AND WHAT TO DO WITH AN ACID LEAK AFTER THE
22 MEETING.

23 SO I LEFT AND WENT TO THE MEETING. WHEN I CAME BACK, AN
24 OPERATOR PULLED ME ASIDE IN THE CONTROL CENTER AND SAID,
25 WHAT'S GOING ON WITH THE ACID TANK? WHAT -- WHAT DO YOU MEAN?

1 WE HAD A TANK OVERFILLED LAST WEEK. SHE SAID CIARA IS -- WAS
2 IN THE BATHROOM CRYING, MUMBLING ABOUT THE ACID. LIKE, WOW.
3 OKAY.

4 SO I DON'T RECALL IF I FOUND CIARA IN THE CONTROL CENTER
5 OR IF I CALLED HER ON THE RADIO TO MEET ME OUT THERE, BUT AT
6 SOME POINT WE CONNECTED BACK OUT AT THE ACID TANK. WE TOOK
7 THE TRUCK TO THE STORAGE SHED WHERE WE KEEP THE OYSTER SHELLS.
8 I SHOWED HER THAT AREA AND WHERE THEY ARE AT, WHAT THEY LOOK
9 LIKE. IT'S LIKE A BAG OF CEMENT BASICALLY. IT'S A PAPER BAG
10 YOU GET, 50-POUND BAG. PUT IT IN THE TRUCK, DROVE IT BACK
11 AROUND TO THE ACID TANK.

12 AND THEN I DEMONSTRATED, TAKING IT, OPENING IT, AND
13 PUTTING IT INTO THE CONTAINMENT AREA WHILE SHE WATCHED FROM
14 THE TRUCK.

15 Q. WHY DID YOU DO IS THAT?

16 A. SHE WAS UNCOMFORTABLE AND LOOKED SCARED TO ME, SO I WAS
17 DEMONSTRATING THAT TO MAKE HER FEEL BETTER.

18 Q. OKAY. ANYTHING ELSE HAPPEN BETWEEN YOU AND HER WITH
19 REGARD TO THE ACID OVERFILL?

20 A. THAT WAS IT.

21 Q. NOW, DO YOU HAVE AN UNDERSTANDING AS TO WHETHER A ZERO
22 SIXTY REPORT WAS EVER PREPARED?

23 A. YES, I WAS.

24 Q. WERE UP THE ONE TO PREPARE IT?

25 A. NO.

1 Q. WHO DID IT?

2 A. DONNIE GOFF.

3 Q. NOW WERE YOU DONNIE GOFF'S SUPERVISOR?

4 A. NO.

5 Q. DID YOU HAVE THE AUTHORITY TO TELL DONNIE GOFF WHAT TO DO,
6 WHEN, WHERE AND HOW?

7 A. NO.

8 Q. AND JUST TO CIRCLE BACK AROUND ON ONE OTHER THING, THE
9 SIGHT GLASS.

10 DO YOU KNOW WHAT I AM TALKING ABOUT? THE SIGHT GLASS ON
11 THE ACID TANK?

12 A. YES.

13 Q. OKAY.

14 DO YOU KNOW IF MS. NEWTON WAS THE ONLY PERSON TO REFERENCE
15 THE SIGHT GLASS IN SHIFT TEAM REPORTS?

16 A. I DON'T KNOW.

17 Q. DO YOU KNOW IF A REQUEST HAD BEEN SENT IN FOR REPAIR OF
18 THE SIGHT GLASS?

19 A. I DON'T KNOW. NOT AT THAT POINT.

20 Q. AT SOME POINT DID YOU AND MS. NEWTON DO SOMETHING WITH THE
21 SIGHT GLASS?

22 A. YES. WE WORKED ON UNPLUGGING IT.

23 Q. YOU DID WHAT?

24 A. WE WORKED ON UNPLUGGING IT. WE UNPLUGGED IT.

25 Q. OKAY. SO --

1 **A.** TYPICALLY, BEFORE YOU'LL SUBMIT A WORK REQUEST WHEN THINGS
2 ARE BROKEN, WE TRY TO FIX THINGS WITHIN OUR MEANS BEFORE WE
3 CALL OUT THE CRAFTS PEOPLE. IF IT'S SOMETHING WITHIN OUR
4 REPAIR SCOPE. AND UNPLUGGING TRANSMITTERS AND LEVEL GLASSES
5 IS SOMETHING THAT OPERATIONS WILL GO TO FIRST BEFORE WE CALL
6 OUT REPAIR PEOPLE.

7 **Q.** WHY DID YOU GUYS DO IT THAT?

8 **A.** TO FIX IT.

9 **Q.** DID YOU GO OUT THERE WITH JUST YOUR REGULAR RED JUMPSUIT
10 ON?

11 **A.** NO. WHEN WE ARE DEALING WITH CHEMICALS, WE USE THE PROPER
12 PROTECTIVE EQUIPMENT. SO WITH ACID, IT'S AN ACID SUIT, RUBBER
13 GLOVES, GOGGLES.

14 **Q.** WHEN YOU WENT OUT TO PUT THE OYSTERS SHELLS IN THE PIT --
15 IN THE -- I'LL CALL IT A TROUGH?

16 **A.** THAT'S FINE.

17 **Q.** OKAY. DID YOU PUT ON A PP -- WHAT DO YOU CALL IT? PROPER
18 PROTECTIVE --

19 **A.** PERSONAL PROTECTIVE EQUIPMENT. PPE.

20 **Q.** DID YOU PUT ON THAT TYPE OF EQUIPMENT THAT DAY?

21 **A.** GLOVES AND GOGGLES. NO ACID SUIT.

22 **Q.** WHY NOT?

23 **A.** WHAT WOULD I BE PROTECTING MYSELF FROM. THERE WAS NO
24 THREAT, NO HAZARD.

25 **Q.** ALL RIGHT. NOW, YOU WERE ASKED ABOUT SOMETHING

1 EXHIBIT 37. CAN YOU LOOK AT EXHIBIT 37, PLEASE?

2 **MR. LAFAYETTE:** I DON'T THINK 37 IS ADMITTED INTO
3 EVIDENCE, YOUR HONOR?

4 **THE COURT:** 37 IS ADMITTED.

5 **MR. LAFAYETTE:** IT IS. THANK YOU, YOUR HONOR.

6 **THE COURT:** IT WAS ADMITTED WITH MR. PEREZ.

7 (DISPLAYED ON SCREEN.)

8 **BY MR. LAFAYETTE:**

9 **Q.** SO THIS IS EXHIBIT 37. IT'S DATED JULY 29, 2016.

10 DO YOU SEE THAT?

11 **A.** YES.

12 **Q.** NOW, PRIOR TO THAT DATE HAD YOU INTERVIEWED MS. NEWTON?
13 HAD YOU SAT DOWN WITH MS. NEWTON, GUY ROZAR, AND NICK BACKENS
14 TO REVIEW MS. NEWTON'S PD LOG?

15 **A.** YES.

16 **Q.** AND SO DID YOU DOCUMENT IN WRITING THE CONTENT OF THE
17 MEETING THAT YOU HAD THAT DAY?

18 **A.** YES.

19 **Q.** WE'LL TALK ABOUT THAT AT ANOTHER TIME. OKAY?

20 BUT SO DURING THAT MEETING, DID YOU HAVE A CONVERSATION IN
21 ANY WAY WHATSOEVER REGARDING MS. NEWTON'S TARDIES?

22 **A.** YES.

23 **Q.** ON THE 22ND, WHEN YOU HAD THAT MEETING, WAS MS. NEWTON
24 LATE TO WORK?

25 **A.** YES.

1 Q. DID YOU SEE HER COME THROUGH THE DOOR?

2 A. I DON'T RECALL.

3 Q. OKAY. YOU SAID THAT YOU LEARNED AT SOME POINT THAT SHE
4 SAID THAT SHE SAID -- SHE HAD AN ARRANGEMENT WITH PATRICK
5 NEUMAN.

6 DO YOU REMEMBER THAT?

7 A. YES.

8 Q. WHO WAS IT THAT TOLD YOU THAT SHE HAD AN ARRANGEMENT WITH
9 PATRICK NEUMAN?

10 A. PATRICK. NOT AN ARRANGEMENT BUT THAT SHE TEXTED HIM AND
11 SAID SHE WAS COMING.

12 Q. TEXTED HIM AND SAID SHE WAS COMING?

13 A. YES.

14 Q. NOW, DO YOU HAVE AN UNDERSTANDING AS TO WHEN IT WAS
15 RELATIVE TO 6:00 O'CLOCK A.M. SHE TEXTED PATRICK NEUMAN AND
16 SAID SHE WAS COMING?

17 MS. SMALLETS: OBJECTION, HEARSAY.

18 THE COURT: FORM OF THE QUESTION COULD ELICIT
19 HEARSAY. REPHRASE.

20 BY MR. LAFAYETTE:

21 Q. DID YOU GET AN UNDERSTANDING AS TO HOW -- RELATIVE TO
22 6:00 O'CLOCK WHEN SHE TEXTED PATRICK NEUMAN?

23 MS. SMALLETS: OBJECTION, HEARSAY.

24 THE COURT: WELL, I DON'T KNOW. WHAT IS IT BEING
25 OFFERED FOR? WHAT PURPOSE? FOR THE EXACT TIME?

1 **MR. LAFAYETTE:** AS CLOSE --

2 **THE COURT:** THE ACCURACY OF THAT TIME?

3 **MR. LAFAYETTE:** YES.

4 **THE COURT:** SUSTAINED.

5 **BY MR. LAFAYETTE:**

6 **Q.** WHEN PEOPLE -- IF SOMEONE IS GOING TO BE LATE, DO THEY
7 HAVE TO CALL SOMEONE OTHER THAN THE PERSON THEY ARE RELIEVING?

8 **A.** YES. THEY SHOULD CALL THE SHIFT TEAM LEADER.

9 **Q.** WOULD THAT HAVE BEEN YOU?

10 **A.** YES.

11 **Q.** DID YOU GET A PHONE CALL FROM HER?

12 **A.** NO.

13 **Q.** OKAY. NOW, WHEN WAS IT THAT YOU GOT SOMETHING FROM
14 PATRICK NEUMAN THAT SAID HE HAD GOTTEN TAKE TEXT?

15 **A.** AFTER I TOLD HIM TO GO HOME.

16 **Q.** AFTER YOU HAVE TOLD HIM TO GO HOME.

17 AND HOW LONG HAD SHE BEEN LATE WHEN YOU TOLD HIM TO GO
18 HOME?

19 **A.** SHE HAD NOT BEEN LATE YET. IT WAS GETTING TOWARDS THE END
20 OF THE SHIFT. THE SHIFT TECHNICALLY ENDS AT 6:00 O'CLOCK A.M.
21 OR P.M. PEOPLE COME IN SOMETIME BETWEEN 5:30, 5:45 TO RELIEVE
22 EACH OTHER. WHEN IT WAS GETTING CLOSE TO 6:00, I HAD AN EXTRA
23 PERSON ON THE SHIFT AND TOLD PATRICK TO GO HOME.

24 **Q.** IN YOUR MIND WAS SHE LATE?

25 **A.** YES.

1 Q. NOW, THE THREE TARDIES, DO YOU KNOW IF THAT MEANS
2 SOMETHING UNDER THE PD LOG --

3 MS. SMALLETS: OBJECTION, BEYOND THE SCOPE.

4 BY MR. LAFAYETTE:

5 Q. -- UNDER THE POSITIVE DISCIPLINE POLICY?

6 THE COURT: SUSTAINED. BEYOND THE SCOPE.

7 MR. LAFAYETTE: THANK YOU. I RESERVE ON THIS
8 WITNESS, YOUR HONOR.

9 THE COURT: ALL RIGHT. MR. CURRAN, WE WILL SEE YOU
10 ANOTHER DAY. YOU MAY -- OH, SORRY. DO YOU WANT TO EXAMINE AT
11 THIS POINT?

12 MS. SMALLETS: YES.

13 THE COURT: OKAY. GO AHEAD.

14 REDIRECT EXAMINATION

15 BY MS. SMALLETS:

16 Q. MR. CURRAN, COULD YOU PLEASE TAKE A LOOK BACK AT
17 EXHIBIT 99?

18 THE COURT: DO YOU HAVE THAT?

19 THE WITNESS: YES, I DO.

20 THE COURT: GO AHEAD.

21 BY MS. SMALLETS:

22 Q. AND MR. LAFAYETTE HAD ASKED YOU ABOUT AN INSTRUCTION IN
23 SECTION C3 BEFORE USING A DRAEGER GASTEC PUMP TESTED FOR
24 TIGHTNESS USING AN UNOPENED TUBE. THOSE ARE INSTRUCTIONS FOR
25 USING A PUMP, CORRECT?

1 **A.** YOU WOULD HAVE TO USE THE PUMP TO PULL A SAMPLE.

2 **Q.** THOSE ARE INSTRUCTIONS FOR HOW TO USE THE PUMP, RIGHT?

3 **A.** SAYS, BEFORE USING A DRAEGER GASTEC PUMP, TEST IT FOR
4 TIGHTNESS USING AN UNOPENED TUBE. BREAK OFF THE TIPS OF THE
5 DRAEGER SENSIDYNE DETECTOR TUBE. INSERT THE TUBE TIGHTLY INTO
6 THE PUMP.

7 **Q.** AND THEN IT SAYS THAT YOU CAN REUSE A TUBE UP TO TEN
8 TIMES, CORRECT?

9 **A.** YES. SOMETIMES YOU NEED TO DO MORE THAN ONE PULL TO GET A
10 SAMPLE RESULT.

11 **Q.** MR. CURRAN, THIS DOCUMENT, THAT IS SHELL'S OFFICIAL
12 POLICIES, INFORMS OPERATORS THAT THEY CAN REUSE A TUBE,
13 CORRECT? IT SAYS THE TUBES CAN BE USED UP TO TEN TIMES,
14 CORRECT?

15 **A.** YES. THERE'S ACTUALLY A PROCEDURE FOR THE DIFFERENT TYPES
16 OF TUBES. SO SOME USE TEN PULLS DEPENDING ON HOW MUCH.
17 SOMETIMES WE USE HALF A PULL. YES, IT SAYS WE CAN DO TEN
18 PULLS.

19 **Q.** IT SAYS TEN TIMES, DOESN'T IT?

20 **A.** I'LL TAKE YOUR WORD FOR IT. SURE.

21 **Q.** YOU ARE AWARE THAT MS. NEWTON THOUGHT THAT TRAPS WERE
22 BEING SET FOR HER, CORRECT?

23 **MR. LAFAYETTE:** OBJECTION, IT IS OUTSIDE THE SCOPE.

24 **THE COURT:** SUSTAINED.

25

1 **BY MS. SMALLETS:**

2 **Q.** YOU GOT A CALL ABOUT THE SULFURIC ACID SPILL FROM A
3 REPRESENTATIVE OF EITHER THE TRUCKING OR CHEMICAL COMPANY,
4 CORRECT?

5 **A.** YES.

6 **Q.** THAT REPRESENTATIVE WAS CONCERNED ABOUT THE SPILL, WASN'T
7 HE?

8 **A.** IT WAS A FOLLOW-UP CALL. BUT, YEAH, HE WAS CONCERNED.
9 SAFETY AT THE COMPANY, SAFETY --

10 **Q.** AND HE TOLD -- HE ASKED SOME QUESTIONS ABOUT WHY THE
11 SULFURIC ACID TANK HADN'T BEEN FIXED EARLIER, DIDN'T HE?

12 **A.** NO.

13 **Q.** YOU GOT A FOLLOW-UP CALL FROM -- YOU GOT -- THE
14 REPRESENTATIVE FROM THE CHEMICAL COMPANY CAME INTO YOUR OFFICE
15 A FEW DAYS LATER. CORRECT?

16 **A.** YES.

17 **Q.** AND YOU TALKED TO THAT REPRESENTATIVE AT THAT TIME?

18 **A.** YES.

19 **Q.** AND THAT REPRESENTATIVE SAID THAT WAS -- ALSO EXPRESSED
20 CONCERNS, DIDN'T HE?

21 **A.** YES. IT'S A COMMON OCCURRENCE FOR OUR LEVEL TRANSMITTER
22 TO PLUG UP, OR LEVEL GLASS. IT HAPPENS EVERY COUPLE OF
23 MONTHS. SO HE WAS CONCERNED. HE WANTED IT FIXED SO HE CAN
24 DELIVER ACID.

25 **Q.** IT HADN'T BEEN FIXED AT THAT TIME, HAD IT?

1 **A.** CORRECT.

2 **MS. SMALLETS:** YOUR HONOR, I WOULD LIKE TO APPROACH
3 THE WITNESS TO GIVE HIM A COPY OF EXHIBIT 86, WHICH WAS NOT IN
4 OUR WITNESS BINDER BUT IS IN THE BINDERS WE DELIVERED TO THE
5 COURT. SO YOU SHOULD HAVE A COPY.

6 **THE COURT:** HAVE YOU GIVEN A COPY TO MR. LAFAYETTE?

7 **MS. SMALLETS:** I HAVE NOT.

8 **THE COURT:** YOU CANNOT APPROACH HIS WITNESS WITHOUT
9 GIVING HIM A COPY.

10 **MR. LAFAYETTE:** THIS IS OUTSIDE THE SCOPE, YOUR
11 HONOR.

12 **THE COURT:** I DON'T KNOW THAT.

13 **MR. LAFAYETTE:** DO YOU HAVE ONE I CAN USE?

14 **THE COURT:** WHAT IS THE ISSUE?

15 **MS. SMALLETS:** WHAT DAY THE SULFURIC ACID SPILL
16 HAPPENED.

17 **THE COURT:** I'LL ALLOW IT.

18 LET ME KNOW WHEN YOU HAVE IT, MR. LAFAYETTE.

19 **MR. LAFAYETTE:** I HAVE IT.

20 **THE COURT:** GO AHEAD.

21 (EXHIBIT HANDED TO WITNESS.)

22 **BY MS. SMALLETS:**

23 **Q.** MR. CURRAN --

24 **THE COURT:** HOLD ON. HE DOESN'T HAVE IT YET. YOU
25 DIDN'T GIVE HIM A COPY.

1 **MS. SMALLETS:** I APOLOGIZE.

2 **MR. LAFAYETTE:** I HAVE IT.

3 **THE COURT:** OKAY. GO AHEAD.

4 **BY MS. SMALLETS:**

5 **Q.** MR. CURRAN, DIRECTING YOUR ATTENTION TO THE FIRST TWO
6 PAGES OF THAT EXHIBIT, IS THAT A SHIFT REPORT THAT MS. NEWTON
7 COMPLETED ON JULY 4TH, 2016?

8 **A.** YES.

9 **Q.** AND IF YOU LOOK THROUGH THE REST OF THE PAGES OF THAT
10 EXHIBIT, THOSE ARE SHIFT REPORTS MS. NEWTON COMPLETED IN JULY,
11 CORRECT?

12 **A.** IT APPEARS TO BE, YES.

13 **MS. SMALLETS:** YOUR HONOR, WE WOULD LIKE TO OFFER
14 EXHIBIT 68 INTO EVIDENCE.

15 **MR. LAFAYETTE:** NO OBJECTION, YOUR HONOR.

16 **THE COURT:** IT'S ADMITTED.

17 (PLAINTIFF'S EXHIBIT 86 RECEIVED IN EVIDENCE)

18 **BY MS. SMALLETS:**

19 **Q.** ON THAT JULY 4TH, 2016, SHIFT REPORT, MS. NEWTON
20 DOCUMENTED THAT THE SULFURIC ACID TANK WAS AT OVER A HUNDRED
21 PERCENT, DIDN'T SHE?

22 **A.** YES.

23 **MS. SMALLETS:** NOTHING FURTHER.

24 **THE COURT:** ANYTHING ON THAT QUESTION?

25 **MR. LAFAYETTE:** YES, YOUR HONOR.

RECROSS-EXAMINATION

BY MR. LAFAYETTE:

Q. THE -- IF IT HAS JUST BEEN FILLED, WOULD IT BE READING OVER A HUNDRED PERCENT?

A. YES. AND ALSO WHEN THE TRANSMITTER THE LEVEL READING TRANSMITTER PLUGS UP IT READS A HUNDRED BY NATURE OF HOW IT WORKS.

Q. AND GOING BACK TO THAT DOCUMENT THAT YOU LOOKED AT, THE POLICY DOCUMENT, IS THERE ANYTHING IN ANY POLICY THAT YOU'RE SEEING THAT INDICATES THAT YOU CAN USE A BROKEN DRAEGER TUBE TEN TIMES IN A DAY?

MS. SMALLETS: OBJECTION, LEADING.

THE COURT: SUSTAINED. REPHRASE.

BY MR. LAFAYETTE:

Q. DO YOU KNOW OF ANY POLICY THAT SAYS HOW OFTEN YOU CAN USE A BROKEN DRAEGER TUBE IN A DAY?

A. I'M NOT AWARE.

MR. LAFAYETTE: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: ANYTHING ON THAT?

MS. SMALLETS: NO, YOUR HONOR.

THE COURT: ALL RIGHT. NOW, YOU MAY STEP DOWN AND WE WILL SEE YOU ANOTHER DAY, I BELIEVE.

THE WITNESS: THANK YOU.

THE COURT: ALL RIGHT. CALL YOUR NEXT WITNESS.

MS. NUGENT: YOUR HONOR, THE PLAINTIFF CALLS

1 CHRISTINE LAYNE.

2 (CHRISTINE LAYNE, CALLED AS A WITNESS FOR THE PLAINTIFF,
3 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:)

4 THE WITNESS: I DO.

5 THE CLERK: ADJUST THE MIC.

6 THE WITNESS: CHRISTINE RENEE LAYNE. L-A-Y-N-E.

7 THE COURT: GOOD MORNING.

8 THE WITNESS: GOOD MORNING.

9 THE COURT: PUSH YOUR CHAIR.

10 MS. NUGENT: YOUR HONOR, MAY I APPROACH?

11 THE COURT: YOU MAY.

12 (EXHIBIT BINDER HANDED TO WITNESS.)

13 **DIRECT EXAMINATION**

14 BY MS. NUGENT:

15 Q. GOOD MORNING.

16 YOU HAVE BEEN HERE FOR ALL OF THE TESTIMONY IN THE CASE SO
17 FAR, HAVEN'T YOU?

18 A. YES.

19 Q. YOU SAT THROUGH THE OPENING STATEMENTS?

20 A. I DID.

21 Q. AND YOU WERE HERE WHEN WE WERE PREPARING FOR THIS CASE AT
22 THE PRETRIAL CONFERENCE, TOO, RIGHT?

23 A. PRETRIAL CONFERENCE?

24 Q. YOU HEARD THE ARGUMENTS OF THE PARTIES ABOUT EVIDENCE
25 THAT'S COMING IN AND NOT COMING IN IN THE CASE?

1 **A.** I WAS HERE FOR JURY SELECTION.

2 **Q.** WHO DO YOU WORK FOR?

3 **A.** SHELL OIL.

4 **Q.** HOW LONG HAVE YOU WORKED FOR SHELL?

5 **A.** ALMOST 12 YEARS.

6 **Q.** HAVE YOU HAD ANY OTHER FULL-TIME EMPLOYMENT OTHER THAN
7 WORKING FOR SHELL SINCE COLLEGE?

8 **A.** NO.

9 **Q.** YOUR ONLY JOB?

10 **A.** YES.

11 **Q.** HOW LONG HAVE YOU WORKED AT THE REFINERY IN MARTINEZ?

12 **A.** I WORKED THERE FROM JULY OF 2015.

13 **Q.** AND YOU STILL WORK THERE NOW?

14 **A.** NO.

15 **Q.** WHERE DO YOU WORK NOW?

16 **A.** FOR SHELL PIPELINE IN HOUSTON.

17 **Q.** WHEN DID YOU MOVE TO THAT JOB?

18 **A.** OCTOBER 1ST OF THIS YEAR.

19 **Q.** JUST A COUPLE OF MONTHS AGO?

20 **A.** UH-HUH.

21 **Q.** AND YOU HAD WORKED FOR SHELL IN HOUSTON BEFORE, RIGHT?

22 **A.** PRIOR TO THE MARTINEZ REFINERY, YEAH.

23 **Q.** WHAT IS YOUR CURRENT TITLE NOW?

24 **A.** HUMAN RESOURCES BUSINESS PARTNER FOR SHELL PIPELINE.

25 **Q.** WAS THAT A PROMOTION FROM THE TITLE YOU HAD WHEN YOU

1 WORKED FOR SHELL AT ITS MARTINEZ REFINERY?

2 A. NOT IN PAY.

3 Q. IN TITLE?

4 A. IN TITLE, I COULD SAY POSSIBLY.

5 Q. WHAT WAS YOUR TITLE WHEN YOU WERE WORKING FOR SHELL IN
6 2016 IN MARTINEZ?

7 A. INDUSTRIAL RELATIONS MANAGER.

8 Q. THAT IS HR, RIGHT?

9 A. INDUSTRIAL RELATIONS IS INTERFACED WITH THE UNION.

10 Q. WHAT ELSE DID YOU DO AS AN INDUSTRIAL RELATIONS MANAGER
11 OTHER THAN INTERFACING WITH THE UNION?

12 A. I SUPPORTED THE PRODUCTION LEADERSHIP TEAM.

13 Q. WHAT DOES THAT MEAN?

14 A. I SAT ON THE PRODUCTION LEADERSHIP TEAM AND GAVE ADVICE.

15 Q. WHAT KIND OF ADVICE?

16 A. ANY ADVICE RELATIVE TO WHAT THEY WERE DISCUSSING.

17 Q. DID YOU DEAL WITH PERSONNEL ISSUES?

18 A. YES.

19 Q. HOW? WHAT TYPES?

20 A. I GUESS I DON'T UNDERSTAND.

21 Q. WHEN I ASKED YOU IF YOU DEAL WITH PERSONNEL ISSUES, WHAT
22 TYPES OF PERSONNEL ISSUES DID YOU DEAL WITH? WHAT WAS WITHIN
23 YOUR PURVIEW AS AN INDUSTRIAL RELATIONS MANAGER?

24 A. SO GRIEVANCES FROM THE UNION, DISCIPLINE, MERIT AND PAY, A
25 VARIETY OF TOPICS.

1 Q. YOU WERE SHELL'S REPRESENTATIVE IN THOSE TYPES OF
2 INSTANCES, RIGHT? DEALING WITH GRIEVANCES FROM THE UNION?

3 A. FOR THE MARTINEZ REFINERY SPECIFICALLY, YES.

4 Q. IS THERE A DIFFERENCE BETWEEN INDUSTRIAL RELATIONS AND
5 HUMAN RESOURCES?

6 A. I MEAN, THEY ARE DISTINCTLY DIFFERENT FIELDS. BUT AT THE
7 MARTINEZ REFINERY, MY TITLE WAS INDUSTRIAL RELATIONS MANAGER.
8 I WAS WITHIN THE HUMAN RESOURCES DEPARTMENT.

9 Q. ALL YOUR POSITIONS FOR SHELL HAVE BEEN WITHIN THE HUMAN
10 RESOURCES DEPARTMENTS, RIGHT?

11 A. YES.

12 Q. DO YOU EXPECT TO STAY AT SHELL FOR THE FORESEEABLE FUTURE?

13 A. I DON'T KNOW.

14 Q. WHILE YOU'VE WORKED AT SHELL, YOU BECAME A MOTHER, RIGHT?

15 A. I DID.

16 Q. TOOK MATERNITY LEAVE?

17 A. I DID.

18 Q. DO YOU CONSIDER THE COMPANY TO HAVE PRETTY GOOD PAY AND
19 BENEFITS?

20 A. I WOULD GUESS SO.

21 Q. HOW ABOUT FOR YOU? I'M ASKING FOR YOU. YOU WOULD GUESS
22 SO. YOU'VE WORKED THERE. IT'S YOUR ONLY FULL-TIME JOB SINCE
23 COLLEGE.

24 A. I MEAN I DON'T -- I CAN'T GIVE YOU DATA ON OTHER COMPANY'S
25 PAY AND BENEFITS --

1 Q. I'M ASKING WHAT YOU THINK --

2 MR. LAFAYETTE: OBJECTION, ARGUMENTATIVE, YOUR HONOR.

3 THE COURT: OVERRULED. SHE'S IN HR.

4 THE WITNESS: SO FROM MY VIEW, THE PAY AND BENEFITS
5 FOR SPECIFICALLY MATERNITY AND PATERNITY, YEAH, I THINK
6 THEY'RE GREAT.

7 BY MS. NUGENT:

8 Q. YOU SAID WHEN YOU WERE AT THE MARTINEZ REFINERY, YOU
9 WORKED IN THE -- YOU SUPPORTED THE PRODUCTION LEADERSHIP TEAM.
10 IS PRODUCTION A DEPARTMENT, A SPECIFIC DEPARTMENT THERE?

11 A. YES.

12 Q. THAT WAS THE DEPARTMENT THAT MS. NEWTON WORKED IN, RIGHT?

13 A. SHE WORKED IN OPCEN. OPCEN ROLLED UP THROUGH PRODUCTION.

14 Q. AND WHO WAS THE HEAD OF PRODUCTION AT THAT TIME?

15 A. THOR NYGAARD.

16 Q. COULD YOU SPELL HIS NAME, PLEASE?

17 A. N-Y-G-A-A-R-D, LAST NAME. FIRST NAME THOR, T-H-O-R.

18 Q. AT THAT TIME HOW MANY EMPLOYEES WERE IN THAT PRODUCTION
19 UNIT?

20 A. OH, GOSH. I DON'T KNOW. FOUR TO 500.

21 Q. AND WHO WAS YOUR DIRECT BOSS, LORI MARTINELLI?

22 A. YES.

23 Q. AT THE TIME THAT YOU WORKED IN MARTINEZ, ARE YOU AWARE OF
24 ANYBODY IN THAT PRODUCTION UNIT WHO WAS EVER FIRED FOR
25 SPECIFICALLY A SAFETY VIOLATION?

1 **A.** SPECIFICALLY FOR A SAFETY VIOLATION. I DON'T RECALL ALL
2 THE REASONS.

3 **Q.** DO YOU RECALL ANYBODY WHO WAS FIRED SPECIFICALLY FOR A
4 SAFETY VIOLATION?

5 **MR. LAFAYETTE:** OBJECTION. OVERBROAD AND RELEVANCE.

6 **THE COURT:** OVERRULED.

7 **BY MS. NUGENT:**

8 **Q.** YOU DON'T KNOW, DO YOU?

9 **A.** EXCUSE ME?

10 **Q.** YOU DON'T KNOW ANYBODY WHO WAS FIRED SPECIFICALLY FOR A
11 SAFETY VIOLATION AT THE REFINERY IN MARTINEZ?

12 **A.** WE'VE FIRED FOR LIFE-SAVING RULE VIOLATIONS. ABSOLUTELY.

13 **Q.** WHAT DOES THAT MEAN?

14 **A.** LIFE-SAVING RULES ARE THE -- I FORGET HOW MANY, IF THERE'S
15 TEN OR TWELVE CRITICAL RULES THAT ENSURES EVERYONE CAN GO HOME
16 SAFE EVERY DAY.

17 **Q.** WAS MS. NEWTON EVER INVESTIGATED FOR BREAKING A
18 LIFE-SAVING RULE?

19 **A.** NO.

20 **Q.** OKAY. LET'S SWITCH TOPICS AND TALK ABOUT EQUAL EMPLOYMENT
21 OPPORTUNITIES.

22 YOU ARE FAMILIAR WITH THAT TERM, AREN'T YOU?

23 **A.** YES.

24 **Q.** AND EQUAL EMPLOYMENT OPPORTUNITIES INCLUDES NOT
25 DISCRIMINATING AGAINST EMPLOYEES BASED ON THEIR GENDER, RIGHT?

1 **A.** YES.

2 **Q.** IT ALSO INCLUDES ENSURING THAT EMPLOYEE -- EMPLOYEES ARE
3 FREE FROM HARASSMENT BASED ON THEIR GENDER, RIGHT?

4 **A.** YES.

5 **Q.** IS THERE ANYBODY AT THE SHELL MARTINEZ REFINERY THAT YOU
6 KNOW OF WHO IS RESPONSIBLE FOR MAKING SURE THERE ARE EQUAL
7 EMPLOYMENT OPPORTUNITIES FOR ITS EMPLOYEES?

8 **A.** I THINK EVERYONE IS RESPONSIBLE FOR IT.

9 **Q.** IS THERE ANYONE WHO HAS SPECIFIC RESPONSIBILITY FOR THAT?

10 **A.** I THINK ALL OF MANAGEMENT AND HR IS RESPONSIBLE FOR IT.

11 **Q.** DO YOU PERSONALLY BELIEVE OR DID YOU PERSONALLY BELIEVE
12 THAT YOU HAD RESPONSIBILITY FOR EQUAL EMPLOYMENT OPPORTUNITY
13 ISSUES THERE?

14 **A.** I SAID ALL OF MANAGEMENT AND HR. I WAS A PART OF HR, SO
15 YES.

16 **Q.** LET'S KEEP TALKING ABOUT EQUAL EMPLOYMENT OPPORTUNITIES
17 AND YOUR TRAINING IN HR.

18 YOU UNDERSTAND THAT THERE'S A DIFFERENCE, RIGHT, BETWEEN
19 HARASSMENT BASED ON SEX AND HARASSMENT BASED ON GENDER, DON'T
20 YOU?

21 **A.** YES.

22 **Q.** WHAT'S THE DIFFERENCE?

23 **MR. LAFAYETTE:** OBJECTION TO THE EXTENT IT CALLS FOR
24 A LEGAL CONCLUSION, YOUR HONOR.

25 **MS. NUGENT:** OKAY. I WILL REPHRASE.

1 **BY MS. NUGENT:**

2 **Q.** SO BASED ON YOUR HR TRAINING AND YOUR WORK AS AN HR
3 PROFESSIONAL OVER THESE YEARS, DO YOU UNDERSTAND THAT
4 HARASSMENT BASED ON SEX MEANS UNWANTED SEXUAL ADVANCES OR
5 OBSCENE COMMENTS, RIGHT?

6 **MR. LAFAYETTE:** OBJECTION, TO THE EXTENT IT CALLS FOR
7 A LEGAL CONCLUSION, YOUR HONOR.

8 **THE COURT:** SHE CAN ANSWER.

9 I WILL TELL YOU, THE JURORS, WHAT THE LAW IS. I'M
10 ASSUMING THAT THIS IS FOUNDATIONAL WITH SOME QUESTIONS. SHE'S
11 IN HR. SO I'M GOING TO ALLOW YOU HER TO ANSWER THE QUESTION
12 BUT SHE CAN'T TELL YOU WHAT THE LAW IS.

13 GO AHEAD. ANSWER THE QUESTION.

14 **THE WITNESS:** I CAN SPEAK TO THE SHELL CODE OF
15 CONDUCT OUTLINING SEXUAL HARASSMENT AS UNWANTED SEXUAL
16 REQUESTS OR SOMETHING OF A SEXUAL NATURE, AND THEN IT GOES ON
17 TO DISCUSS INAPPROPRIATE MATERIALS.

18 **BY MS. NUGENT:**

19 **Q.** WHAT DO YOU MEAN BY INAPPROPRIATE MATERIALS?

20 **A.** LIKE PICTURES OR DOCUMENTS.

21 **Q.** STICKERS THAT HAVE INAPPROPRIATE MATERIAL ON IT?

22 **A.** YES.

23 **Q.** THAT VIOLATES SHELL'S CODE OF CONDUCT?

24 **A.** YES.

25 **Q.** ALL RIGHT. NOW, I WANT TO TALK ABOUT HARASSMENT BASED ON

1 GENDER.

2 SO YOU'VE GIVEN US THE DEFINITION OF HARASSMENT BASED ON
3 SEX ACCORDING TO SHELL'S CODE OF CONDUCT. SO BASED ON YOUR
4 TRAINING AND YOUR KNOWLEDGE, HARASSMENT BASED ON GENDER IS A
5 LITTLE DIFFERENT, RIGHT?

6 **MR. LAFAYETTE:** OBJECTION, SAME OBJECTION.

7 **THE COURT:** SAME INSTRUCTION TO THE JURY.

8 GO AHEAD.

9 **THE WITNESS:** UNDER EQUAL OPPORTUNITY, ALL EMPLOYMENT
10 DECISIONS SHOULD BE MADE BASED ON BUSINESS CRITERIA, NOT ON
11 ANY PROTECTED CLASSIFICATION INCLUDING GENDER.

12 **BY MS. NUGENT:**

13 **Q.** I WANT TO REALLY NARROW ON GENDER THOUGH. I'M NOT TALKING
14 ABOUT ALL PROTECTIVE CLASSES AND I'M NOT TALKING GENERALLY.

15 YOU UNDERSTAND. YOU WORK AT THE REFINERY, RIGHT? DO YOU
16 UNDERSTAND THAT -- WOULD YOU AGREE IT'S A MALE-DOMINATED
17 ENVIRONMENT?

18 **A.** THE REFINERY? YES.

19 **Q.** AND GENDER HARASSMENT CAN BE AND YOU KNOW THIS BASED ON
20 YOUR TRAINING, CAN INCLUDE HOSTILITY TOWARDS WOMEN IN A
21 WORKPLACE BECAUSE IT IS A MALE-DOMINATED ENVIRONMENT AND WOMEN
22 ARE NOT WELCOME THERE, RIGHT? THAT CAN BE GENDER HARASSMENT?

23 **MR. LAFAYETTE:** THE QUESTION IS COMPOUND.

24 **THE COURT:** SUSTAINED.

1 **BY MS. NUGENT:**

2 **Q.** OKAY.

3 GENDER HARASSMENT CAN INCLUDE MEN NOT WANTING A WOMAN IN
4 THE WORKPLACE SPECIFICALLY BECAUSE SHE'S A WOMAN, RIGHT? YOU
5 WOULD UNDERSTAND THAT TO BE GENDER HARASSMENT?

6 **MR. LAFAYETTE:** OBJECTION, TO THE EXTENT THAT IT
7 CALLS FOR A LEGAL CONCLUSION.

8 **THE COURT:** I'LL ALLOW HER TO ANSWER IT. SAME
9 INSTRUCTION TO THE JURY.

10 OKAY. GO AHEAD.

11 **THE WITNESS:** I AM SORRY, CAN YOU RESTATE THE
12 QUESTION?

13 **THE COURT:** THE COURT REPORTER CAN REREAD IT.

14 (QUESTION READ.)

15 **THE WITNESS:** THEIR PERSONAL BELIEFS WITHOUT IT
16 COMING INTO THE WORKFORCE, I DON'T KNOW.

17 **BY MS. NUGENT:**

18 **Q.** PLEASE ANSWER THE QUESTION.

19 WOULD YOU UNDERSTAND THAT MEN NOT WANTING A WOMAN TO BE IN
20 THE WORKPLACE SPECIFICALLY BECAUSE SHE'S A WOMAN; WOULD YOU
21 UNDERSTAND THAT TO BE GENDER HARASSMENT?

22 **A.** NO.

23 **Q.** AT SHELL THERE ARE MANY DIFFERENT WAYS FOR AN EMPLOYEE TO
24 RAISE CONCERNS THAT THEY ARE HAVING ABOUT THE WORKPLACE,
25 AREN'T THERE?

1 **A.** YES.

2 **Q.** THEY CAN RAISE CONCERNS TO THEIR DIRECT SUPERVISOR, YES?

3 **A.** YES.

4 **Q.** ANY MEMBER OF MANAGEMENT?

5 **A.** YES.

6 **Q.** TO THE UNION?

7 **A.** YES.

8 **Q.** TO ANYONE IN HR OR INDUSTRIAL RELATIONS?

9 **A.** YES.

10 **Q.** AND YOU'VE BEEN TAUGHT IN YOUR HR TRAINING THAT YOU HAVE
11 AN OBLIGATION TO LOOK INTO CONCERNS THAT AN EMPLOYEE TELLS YOU
12 THAT SHE'S HAVING ABOUT HER WORKING ENVIRONMENT, RIGHT?

13 **A.** SO CONCERNS ARE LOOKED INTO, YES.

14 **Q.** I'M ASKING ABOUT YOU AND YOUR OBLIGATION.

15 YOU KNOW FROM ALL THE TRAINING THAT YOU'VE HAD THAT YOU
16 HAVE AN OBLIGATION IF AN EMPLOYEE SAYS THAT SHE'S BEING
17 SINGLED OUT, THAT YOU NEED TO LOOK INTO THAT, RIGHT?

18 **A.** YES.

19 **Q.** AND YOU HAVE BEEN TAUGHT IN YOUR TRAINING THAT AN EMPLOYEE
20 DOES NOT HAVE TO USE ANY MAGIC WORDS IN ORDER FOR THAT TO
21 TRIGGER YOUR OBLIGATION TO LOOK INTO CONCERNS THAT SHE IS
22 RAISING, RIGHT?

23 **A.** YES.

24 **Q.** SO THE EMPLOYEE DOES NOT HAVE TO SAY, I HAVE BEEN
25 DISCRIMINATED AGAINST, IN ORDER TO TRIGGER YOUR OBLIGATION TO

1 LOOK INTO IT, RIGHT?

2 **A.** CORRECT.

3 **Q.** OR THE WORD "HARASSMENT", AN EMPLOYEE DOES NOT HAVE TO USE
4 THAT SPECIFIC WORD TO TRIGGER YOUR OBLIGATION AS THE HR
5 PROFESSIONAL TO LOOK INTO WHAT SHE'S RAISING, RIGHT?

6 **A.** CORRECT.

7 **Q.** AND YOU UNDERSTAND THAT WORDS LIKE "SINGLED OUT" IS A WAY
8 OF SAYING I FEEL LIKE I AM BEING TREATED IN A DISCRIMINATORY
9 WAY, DON'T YOU?

10 **MR. LAFAYETTE:** OBJECTION, INCOMPLETE HYPOTHETICAL.

11 **THE COURT:** OVERRULED.

12 **THE WITNESS:** YES.

13 **BY MS. NUGENT:**

14 **Q.** AND YOU UNDERSTAND USING WORDS LIKE "I'M BEING TREATED
15 UNFAIRLY" IS ANOTHER WAY OF SAYING I FEEL LIKE I'M BEING
16 DISCRIMINATED AGAINST, DON'T YOU?

17 **A.** YES.

18 **Q.** IN ALL OF THE TIME THAT YOU HAVE WORKED FOR SHELL, HAVE
19 YOU RECEIVED ANY WRITTEN GUIDANCE IN HOW TO CONDUCT AN
20 INVESTIGATION INTO CONCERNS ABOUT DISCRIMINATION OR
21 HARASSMENT?

22 **A.** NO.

23 **Q.** ALL RIGHT. LET'S -- WE'VE HEARD -- PLEASE.

24 **A.** NOTHING LEFT. THAT'S OKAY.

25 **MS. NUGENT:** MAY I?

1 **THE COURT:** SURE. THEN WE WILL REFILL IT AT THE
2 BREAK.

3 (PAUSE IN THE PROCEEDINGS.)

4 **BY MS. NUGENT:**

5 **Q.** WE'VE HEARD TESTIMONY IN THE CASE ABOUT ATTENDANCE. SO I
6 WANT TO TALK ABOUT SHELL'S ATTENDANCE POLICY NOW.

7 YOU DON'T KNOW OF ANY SHELL POLICY SAYING HOW MANY MINUTES
8 AN EMPLOYEE CAN BE LATE BEFORE THEY ARE CONSIDERED TARDY;
9 ISN'T THAT TRUE?

10 **A.** I BELIEVE THE ATTENDANCE MANAGEMENT PROCEDURE STATES IT IS
11 15 MINUTES.

12 **THE COURT:** THAT IT IS WHAT?

13 **THE WITNESS:** 15 MINUTES.

14 **THE COURT:** THANK YOU.

15 **BY MS. NUGENT:**

16 **Q.** DID YOU LEARN THAT RECENTLY?

17 **A.** NO.

18 **Q.** DID YOU KNOW THAT AT THE TIME MS. NEWTON WAS AN EMPLOYEE
19 AT SHELL?

20 **A.** YEAH.

21 **MS. NUGENT:** YOUR HONOR, I WOULD LIKE TO PLAY A CLIP
22 FROM MS. NEWTON'S DEPOSITION.

23 BEFORE WE DO THAT, IT'S PAGE 67, LINES 22 THROUGH 25.

24 **THE COURT:** GO AHEAD.

25 (VIDEO CLIP PLAYED AND REPORTED AS FOLLOWS:)

1 "QUESTION: ARE YOU AWARE OF ANY SHELL POLICIES THAT
2 ADDRESS HOW MANY MINUTES AN EMPLOYEE NEEDS TO BE LATE
3 BEFORE THEY'RE CONSIDERED TARDY?

4 "ANSWER: NO."

5 **BY MS. NUGENT:**

6 **Q.** THERE IS NO TIME CARD THAT THE EMPLOYEES IN PRODUCTION IN
7 THE REFINERY PUNCH, IS THERE?

8 **A.** NO.

9 **Q.** AND ISN'T IT TRUE THAT YOU ALSO DON'T KNOW WHETHER
10 EMPLOYEES ARE EXPECTED TO REPORT THEIR START AND STOP TIMES TO
11 THE PRECISE MINUTE?

12 **A.** NO.

13 **Q.** YOU DON'T KNOW?

14 **A.** I'M SORRY, I COULDN'T REMEMBER THE FIRST PART OF YOUR
15 QUESTION.

16 **Q.** OKAY. EMPLOYEES ARE NOT REQUIRED TO REPORT THEIR START
17 AND STOP TIMES TO THE EXACT MINUTE, ARE THEY?

18 **A.** CORRECT.

19 **Q.** YOU DON'T RECALL ANY CONVERSATIONS YOU EVER HAD WITH ERIC
20 PEREZ ABOUT CIARA NEWTON BEING LATE, DO YOU?

21 **A.** THE ONLY CONVERSATION I HAD WITH ERIC AROUND HER TARDIES
22 WAS WHEN HE REQUESTED THE GATE LOGS.

23 **Q.** DO YOU RECALL ANYTHING SPECIFIC SAID IN THAT CONVERSATION?

24 **A.** NO.

25 **Q.** SINCE YOU BROUGHT UP GATE LOGS, WHAT DOES THAT MEAN? WHAT

1 IS A GATE LOG?

2 **A.** BECAUSE THE REFINERY HAS A WHARF TO GET IN AND OUT OF THE
3 REFINERY, YOU HAVE TO HAVE A TWIC CARD, WHICH I BELIEVE STANDS
4 FOR TRANSPORTATION WORKERS IDENTIFICATION CARD, WHICH IS A
5 CLEARANCE GIVEN TO YOU TO SAY YOU ARE SAFE TO COME IN AND OUT
6 OF THE REFINERY. SO TO ENTER AND EXIT THE REFINERY YOU BADGE
7 THE TWIC CARD AGAINST A READER.

8 **Q.** THE REPORT OF WHEN THE BADGE WAS PUT ONTO THE MACHINE,
9 THAT RESULTS IN WHAT'S CALLED A GATE LOG? THAT'S THE REPORT
10 THAT YOU USE?

11 **A.** CORRECT. THAT'S TRACKED BY OUR SECURITY DEPARTMENT.

12 **Q.** GATE LOGS AREN'T USED FOR TIMEKEEPING THOUGH, ARE THEY,
13 FOR AN EMPLOYEE'S TIMEKEEPING?

14 **A.** CORRECT, THEY ARE NOT.

15 **Q.** YOU HAVEN'T BEEN TRAINED IN READING THE GATE LOGS, HAVE
16 YOU?

17 **A.** NO.

18 **Q.** YOU HAVE NO UNDERSTANDING OF EVEN HOW TO READ THEM, DO
19 YOU?

20 **A.** I THINK THEY ARE PRETTY STRAIGHTFORWARD BUT I HAVE NOT
21 BEEN TRAINED, NO.

22 **Q.** YOU DON'T HAVE ANY UNDERSTANDING OF HOW TO DO IT, DO YOU?

23 **A.** NO.

24 **Q.** YOU HAVE NO BELIEF IN WHETHER THE GATE LOGS ARE ACCURATE
25 OR NOT; ISN'T THAT TRUE?

1 **A.** I MEAN, I DON'T HAVE ANY REASON TO NOT THINK THEY'RE
2 ACCURATE, BUT I DON'T HAVE ANY SPECIFIC KNOWLEDGE ONE WAY OR
3 ANOTHER.

4 **Q.** YOU'VE NEVER PERSONALLY CONSIDERED GATE LOGS AS A FACTOR
5 IN A TERMINATION DECISION, HAVE YOU?

6 **A.** NO.

7 **Q.** OKAY. LET'S TALK MORE SPECIFICALLY ABOUT MS. NEWTON.

8 YOU HAVE, OTHER THAN SEEING HER THE PAST FEW DAYS, YOU
9 HAVE ONLY MET HER TWICE, RIGHT, WHILE YOU WERE BOTH WORKING AT
10 THE REFINERY?

11 **A.** CORRECT.

12 **MS. NUGENT:** YOUR HONOR, WE TALKED ABOUT THIS
13 YESTERDAY. AT THIS TIME I WOULD LIKE TO TALK ABOUT THE
14 EXHIBIT 70, WHICH IS THE PERSONNEL FILE. AND I BELIEVE WE ARE
15 GOING TO MAKE A NEW EXHIBIT.

16 **BY MS. NUGENT:**

17 **Q.** MS. LAYNE, IN FRONT OF YOU THERE ARE SOME BINDERS.

18 **A.** OKAY.

19 **Q.** IF YOU CAN TURN TO EXHIBIT 70.

20 **MR. LAFAYETTE:** WE MODIFIED THIS EXHIBIT?

21 **MS. NUGENT:** WE DID.

22 **MR. LAFAYETTE:** CAN I SEE THE MODIFICATION?

23 **MS. NUGENT:** I WILL TELL YOU WHEN WE ARE ALL THERE,
24 YES.

25

1 **BY MS. NUGENT:**

2 **Q.** RIGHT NOW EXHIBIT 70 STARTS AT DEFENDANT 299. IF YOU WILL
3 LOOK AT THAT, MS. LAYNE.

4 **A.** OKAY.

5 **Q.** AND THAT LOOKS TO BE A LETTER THAT YOU SENT TO --

6 **THE COURT:** COUNSEL, GO OVER TO MR. LAFAYETTE. HE'S
7 ENTITLED TO KNOW HOW YOU'VE MODIFIED THIS.

8 **MS. NUGENT:** I HAVEN'T MODIFIED IT YET.

9 **THE COURT:** OKAY. ALL RIGHT. ONE STEP AT A TIME.

10 **BY MS. NUGENT:**

11 **Q.** THE FRONT PAGE IS A LETTER FROM YOU TO SOMEONE FROM THE
12 UNION, CORRECT?

13 **A.** YES.

14 **MR. LAFAYETTE:** YOUR HONOR, THAT'S WHAT --

15 **MS. NUGENT:** I AM GOING TO DO IT NOW.

16 **MR. LAFAYETTE:** I OBJECT AND MOVE TO STRIKE THE LAST
17 ANSWER BECAUSE THAT'S WHAT WE WERE OBJECTING TO YESTERDAY.

18 (COUNSEL CONFER.)

19 **THE COURT:** TURN OFF THE MIC, PLEASE, FRANCES.

20 (PAUSE IN THE PROCEEDINGS.)

21 **THE COURT:** THE MICS ARE OFF OVER THERE.

22 (PAUSE IN THE PROCEEDINGS.)

23 **THE COURT:** IS THERE A RESOLUTION ON THE TOPIC?

24 **MS. NUGENT:** THERE IS, YOUR HONOR.

25 **THE COURT:** MOTION TO STRIKE IS GRANTED.

1 **MS. NUGENT:** WE WOULD LIKE TO MARK DEFENDANT'S 301 --

2 **THE CLERK:** THE PAGE NUMBER?

3 **THE COURT:** JUST THAT PAGE?

4 **MS. NUGENT:** UNTIL 325 AS EXHIBIT 70A.

5 **THE COURT:** OKAY.

6 (PLAINTIFF'S EXHIBIT 70A MARKED FOR IDENTIFICATION)

7 CONTINUE.

8 **BY MS. NUGENT:**

9 **Q.** MS. LAYNE, AS YOU'RE LOOKING AT THAT EXHIBIT, IF YOU WILL
10 GO TO DEFENDANT'S 301.

11 **THE COURT:** SHE'S REFERRING TO THE LITTLE NUMBER ON
12 THE BOTTOM RIGHT-HAND SIDE.

13 **THE WITNESS:** OKAY.

14 **BY MS. NUGENT:**

15 **Q.** ARE YOU THERE?

16 **A.** UH-HUH.

17 **Q.** STARTING AT THAT PAGE, IS THAT MS. NEWTON'S PERSONNEL
18 FILE?

19 **A.** NO.

20 **Q.** WHAT DO YOU RECOGNIZE IT TO BE?

21 **A.** THIS DEF 301?

22 **Q.** YES. AND GOING THROUGH TO DEF 325.

23 **A.** I'M SORRY, DEF 305. THESE ARE MATERIALS GIVEN TO HER IN
24 HER TERMINATION MEETING.

25 **Q.** OKAY. AND IF YOU GO NOT JUST TO THREE -- GO ALL THE WAY

1 TO THE END OF THE EXHIBIT, 325 ON THE BOTTOM RIGHT?

2 **A.** OH, 325.

3 YEAH, IT LOOKS LIKE HER PERSONNEL FILE.

4 **MS. NUGENT:** AT THIS TIME I WOULD LIKE TO OFFER
5 EXHIBIT 70A INTO EVIDENCE.

6 **MR. LAFAYETTE:** NO OBJECTION, YOUR HONOR.

7 **THE COURT:** 70A IS ADMITTED.

8 (PLAINTIFF'S EXHIBIT 70A RECEIVED IN EVIDENCE)

9 **BY MS. NUGENT:**

10 **Q.** YOU CAN PUT THAT AWAY. I WILL ASK YOU ABOUT SOME OTHER
11 THINGS NOW.

12 WE TALKED ABOUT THE FIRST -- YOU'VE ONLY MET MS. NEWTON
13 TWICE. I WANT TO TALK ABOUT THE FIRST TIME. THAT WAS IN THE
14 AUGUST 2ND, 2016 MEETING THAT YOU PARTICIPATED IN, RIGHT?

15 **A.** YES.

16 **Q.** YOU DON'T REMEMBER EVER SPEAKING TO HER BEFORE THEN; ISN'T
17 THAT TRUE?

18 **A.** CORRECT.

19 **Q.** ERIC PEREZ WAS THE PERSON WHO CALLED FOR THAT MEETING TO
20 OCCUR, RIGHT?

21 **A.** YES.

22 **Q.** AND HE WAS HER SUPERVISOR AT THAT TIME, RIGHT?

23 **A.** YES.

24 **Q.** AND HE WAS ACTUALLY HER SUPERVISOR THROUGHOUT HER
25 EMPLOYMENT?

1 **A.** I BELIEVE SO, YES.

2 **Q.** AND YOU KNEW BEFORE THAT MEETING THAT MS. NEWTON HAD SAID
3 THAT SHE FELT SHE WASN'T BEING TREATED THE SAME AS THE OTHER
4 GUYS, RIGHT?

5 **A.** YES.

6 **Q.** AND BEFORE THAT MEETING, YOU KNEW THAT MS. NEWTON HAD ALSO
7 COMPLAINED ABOUT BEING SINGLED OUT, RIGHT?

8 **A.** YES.

9 **Q.** AND BEING TREATED DIFFERENTLY AND UNFAIRLY?

10 **A.** IT WAS ALL THE SAME SENTENCE IN AN EMAIL, YES.

11 **Q.** YOU KNEW THAT GOING INTO THE MEETING?

12 **A.** YES.

13 **Q.** SO LET'S TALK ABOUT WHAT HAPPENED THERE.

14 BESIDES YOU AND MR. PEREZ AND MS. NEWTON, THERE WERE ALSO
15 TWO REPRESENTATIVES FROM THE UNION PRESENT, RIGHT?

16 **A.** CORRECT.

17 **Q.** ONE WAS RAY JONES?

18 **A.** YES.

19 **Q.** DO YOU KNOW WHO HE IS?

20 **A.** HE IS AN ENVIRONMENTAL REP FOR THE USW.

21 **Q.** USW?

22 **A.** UH-HUH.

23 **Q.** AND THEN WHO WAS THE OTHER UNION REMEMBER REP?

24 **A.** NICK BACKENS.

25 **Q.** HE WAS TRAINING TO BE A UNION STEWARD, THAT WAS YOUR

1 UNDERSTANDING AT THE TIME, RIGHT?

2 **A.** NO, HE WAS THE STEWARD. HE WAS THE STEWARD FOR OPCEN.

3 **Q.** AS THE MEETING BEGAN, MR. PEREZ TOLD MS. NEWTON THAT HE
4 WAS GOING TO INVESTIGATE HER CLAIMS, RIGHT?

5 **A.** I BELIEVE THE STRUCTURE OF THE MEETING WAS HE WENT THROUGH
6 THE INVESTIGATIONS THAT HAD ALREADY BEEN CONDUCTED, THEN THE
7 PERFORMANCE, AND THEN THE SECOND HALF --

8 **Q.** MS. LAYNE, I'M TALKING ABOUT --

9 **MR. LAFAYETTE:** SHE IS CUTTING THE WITNESS OFF, YOUR
10 HONOR.

11 **THE COURT:** OVERRULED. SHE'S NOT ANSWERING THE
12 QUESTION.

13 **BY MS. NUGENT:**

14 **Q.** PLEASE ANSWER MY QUESTION.

15 AS THE MEETING BEGAN, ONE OF THE FIRST THINGS DISCUSSED
16 WAS MR. PEREZ TOLD MS. NEWTON HE WAS GOING TO INVESTIGATE HER
17 CLAIMS; ISN'T THAT TRUE?

18 **A.** I DON'T RECALL THAT.

19 **BY MS. NUGENT:**

20 **Q.** DO YOU RECALL ANYTHING ABOUT THE MEETING AS YOU SIT HERE?

21 **A.** YES.

22 **Q.** DO YOU RECALL MR. PEREZ TELLING MS. NEWTON THERE WOULD BE
23 NO DISCIPLINE FOR HER TARDIES?

24 **A.** I DON'T RECALL THAT.

25 **Q.** DO YOU RECALL HIM SAYING THAT THERE WOULD BE NO DISCIPLINE

1 FOR THE DRAEGER INCIDENT?

2 **A.** I DON'T RECALL THAT.

3 **Q.** WHEN YOU ANSWERED, YOU STARTED TO SAY THAT SOME OF THE
4 INCIDENTS IN HER PD LOG WERE DISCUSSED; IS THAT RIGHT?

5 **A.** CORRECT.

6 **Q.** DID THEY DISCUSS THE SPILL AT THE SULFURIC ACID TANK;
7 ISN'T THAT TRUE?

8 **A.** I BELIEVE SO, YES.

9 **Q.** MS. NEWTON SAID IN THAT MEETING THAT MR. CURRAN -- THAT
10 SHE ASKED MR. CURRAN TO ROPE OFF THE SPILL, RIGHT?

11 **A.** SHE MAY HAVE.

12 **MR. LAFAYETTE:** OBJECTION, HEARSAY, YOUR HONOR.

13 **THE COURT:** OVERRULED.

14 **BY MS. NUGENT:**

15 **Q.** SHE TOLD YOU THAT SHE HAD PUT IT ON HER SHIFT REPORT BUT
16 MR. CURRAN HAD TOLD HER TO TAKE IT OFF, RIGHT?

17 **A.** I DON'T KNOW IF I RECALL THAT.

18 **Q.** SHE TOLD YOU THAT MR. CURRAN SAID THAT SHE WAS GOING TO
19 GET ALL OF THE GUYS IN TROUBLE?

20 **A.** YES.

21 **Q.** AND SHE TOLD YOU MR. CURRAN SAID THAT SHE SHOULD HANDLE IT
22 OPERATOR TO OPERATOR?

23 **A.** I BELIEVE SO, YES.

24 **Q.** SHE TOLD YOU MR. CURRAN ASKED HER POINT BLANK, DO YOU WANT
25 TO GET US ALL IN TROUBLE?

1 **A.** YES.

2 **Q.** SHE TOLD YOU SHE WAS BULLIED INTO SOMETHING THAT WASN'T
3 SHELL PROTOCOL?

4 **A.** I DON'T KNOW IF I RECALL THAT.

5 **Q.** WELL, DO YOU RECALL IT OR NOT?

6 **A.** NO. NOT RIGHT NOW.

7 **Q.** SHE TOLD YOU THAT MR. CURRAN WENT OUT OF HIS WAY TO
8 PROTECT THE GUYS ABOUT THE SPILL BUT DIDN'T TREAT HER THAT WAY
9 WHEN SHE TOLD HIM THAT SHE OPENED A VALVE AND WASH WATER CAME
10 OUT.

11 **A.** I DON'T REMEMBER.

12 **Q.** AT SOME POINT MS. NEWTON TOLD YOU AND MR. PEREZ SOME OF
13 THE HOSTILE TREATMENT SHE HAD BEEN SUBJECTED TO SINCE STARTING
14 TO WORK IN OPCEN, RIGHT?

15 **MR. LAFAYETTE:** OBJECTION, CALLS FOR A LEGAL
16 CONCLUSION.

17 **THE COURT:** OVERRULED.

18 **THE WITNESS:** I DON'T RECALL.

19 **THE COURT:** LET ME JUST SAY SOMETHING ON THAT.

20 JURORS, YOU WILL ULTIMATELY DECIDE WHETHER SOMETHING IS
21 HOSTILE OR NOT. WE'RE JUST TRYING TO FIGURE OUT THIS
22 WITNESS'S RECOLLECTION OF THAT PARTICULAR MEETING. YOU TAKE
23 IT FOR THAT PURPOSE.

24 GO AHEAD.

25

1 **BY MS. NUGENT:**

2 **Q.** WOULD YOU LIKE ME TO REPEAT THAT ONE?

3 **A.** YES, PLEASE.

4 **Q.** AT SOME POINT DURING THE MEETING, MS. NEWTON TOLD YOU
5 THAT -- TOLD YOU AND MR. PEREZ ABOUT SOME OF THE TREATMENT
6 THAT SHE BELIEVED WAS HOSTILE THAT SHE HAD ENDURED WHILE
7 WORKING AT OPCEN, RIGHT?

8 **MR. LAFAYETTE:** OBJECTION, QUESTION IS VAGUE AND
9 AMBIGUOUS.

10 **THE COURT:** OVERRULED. THIS WITNESS'S KNOWLEDGE OF
11 WHAT HAPPENED DURING THAT MEETING IS RELEVANT WITH RESPECT TO
12 NOTICE AND OTHER MATTERS.

13 GO AHEAD.

14 **THE WITNESS:** YES.

15 **BY MS. NUGENT:**

16 **Q.** WHAT DID SHE TELL YOU?

17 **A.** SO I RECALL WE SPOKE ABOUT THE GATE LOGS, AND SHE HAD
18 CONCERNS THAT SHE WASN'T BEING TREATED THE SAME AS OTHERS IN
19 REGARDS TO THE GATE LOGS.

20 WHAT ELSE DID WE GO THROUGH? I RECALL WE WENT THROUGH --
21 SHE DID, AT SOME POINT, MAKE A COMMENT THAT THINGS WERE BEING
22 WRITTEN IN HER PD LOG THAT WERE NOT BEING WRITTEN IN OTHER'S
23 PD LOGS.

24 **Q.** DO YOU RECALL HER SAYING ANYTHING ABOUT THE WAY JEFF
25 FISCHER TREATED HER?

1 **A.** I RECALL SHE FELT LIKE JEFF WASN'T VERY ACCOMMODATING WHEN
2 SHE HAD HER FAMILY EMERGENCY.

3 **Q.** ANYTHING ELSE?

4 **A.** NO.

5 **Q.** DID -- IN THE MEETING MS. NEWTON DID TELL YOU THAT THERE
6 WAS SOMEONE WHO USED SOME PRETTY COARSE LANGUAGE ABOUT --
7 AROUND THE TIME THAT SHE WAS ASSIGNED TO OPCEN, RIGHT?

8 **A.** YES.

9 **Q.** WHAT DID SHE SAY ABOUT THAT?

10 **A.** I RECALL IT WAS A COMMENT AROUND... WHAT DID I DO TO GET
11 THESE MF -- I WON'T SAY THE WORD -- IN MY DEPARTMENT.

12 **Q.** DID YOU ASK HER WHO SAID THAT?

13 **A.** SHE JUST SAID A STL. SHE DIDN'T GIVE A NAME.

14 **Q.** DID YOU ASK WHO THE STL WAS?

15 **A.** I DON'T RECALL IF I SPECIFICALLY ASKED AGAIN.

16 **Q.** DID YOU ASK ANY OF THE STL'S IF THEY HAD SAID THAT?

17 **A.** ME PERSONALLY? NO.

18 **Q.** DID ANYBODY?

19 **A.** I DID NOT.

20 **Q.** DO YOU KNOW IF ANYBODY DID?

21 **A.** NO.

22 **Q.** NEVER FOLLOWED UP ON THAT, DID YOU?

23 **A.** I DON'T KNOW. ME PERSONALLY? NO.

24 **Q.** SHE TOLD YOU THAT A SHIFT TEAM LEADER ASKED HER, ARE YOU
25 SURE YOU WANT TO WORK HERE?

1 **A.** I DON'T RECALL.

2 **Q.** SHE TOLD YOU THAT A SHIFT TEAM LEADER TOLD HER WOMEN DON'T
3 MAKE IT IN OPCEN.

4 **A.** YES.

5 **Q.** DID YOU ASK HER WHO SAID THAT?

6 **A.** I DON'T RECALL.

7 **Q.** NEVER FOLLOWED UP ON THAT EITHER, DID YOU?

8 **A.** ME PERSONALLY? NO.

9 **Q.** SHE TOLD YOU SHE FELT UNWELCOME; ISN'T THAT TRUE?

10 **A.** NO, I DON'T RECALL THAT.

11 **Q.** YOU SAID SOME THINGS TO MS. NEWTON IN THAT MEETING TO
12 DISCOURAGE HER FROM COMPLAINING, DIDN'T YOU, MS. LAYNE?

13 **A.** NO.

14 **Q.** YOU DENY THAT?

15 **A.** YES.

16 **Q.** YOU TOLD HER TO STOP AND THINK ABOUT WHAT SHE WAS DOING BY
17 TELLING YOU SOME OF THE HOSTILE THINGS THAT HAD BEEN SAID TO
18 HER SINCE STARTING AT OPCEN; ISN'T THAT TRUE?

19 **A.** NO, I DON'T RECALL DOING THAT.

20 **Q.** YOU TOLD HER THAT SHE WAS MAKING SERIOUS ACCUSATIONS AND
21 SHE SHOULD THINK ABOUT WHAT SHE WAS SAYING?

22 **A.** NO.

23 **Q.** YOU DENY THAT?

24 **A.** I DON'T RECALL SAYING THAT.

25 **Q.** BUT YOU DON'T DENY IT?

1 **A.** I DO NOT BELIEVE I SAID THAT, NO.

2 **Q.** AFTER THIS MEETING ON AUGUST 2ND, YOU NEVER SAW OR TALKED
3 TO MS. NEWTON AGAIN UNTIL THE MEETING WHERE SHE WAS FIRED;
4 ISN'T THAT TRUE?

5 **A.** CORRECT.

6 **Q.** NEVER SENT HER AN EMAIL IN THE MEANTIME?

7 **A.** NO.

8 **Q.** NEVER WENT TO GO TALK TO HER?

9 **A.** IT'S NOT COMMON FOR ME TO GO OUT IN THE REFINERY, NO.

10 **Q.** LESS THAN A MONTH AFTER THAT AUGUST 2ND MEETING, YOU
11 BECAME AWARE THAT MS. NEWTON REPORTED THAT HARD HAT STICKER
12 THAT WE HAVE SEEN SEVERAL TIMES, RIGHT?

13 **A.** YES.

14 **Q.** DID THE PERSON WHO PUT THAT STICKER ON HER DESK VIOLATE
15 SHELL'S SEXUAL HARASSMENT POLICY?

16 **A.** YEAH, THEY VIOLATED SHELL'S CODE OF CONDUCT, YES.

17 **Q.** THAT PART OF THE CODE OF CONDUCT WE TALKED ABOUT EARLIER
18 IN THE EXAM?

19 **A.** YES.

20 **Q.** ABOUT INAPPROPRIATE MATERIALS?

21 **A.** YES.

22 **Q.** WHO WAS THAT PERSON?

23 **A.** I DON'T KNOW.

24 **Q.** WHAT DID YOU DO TO FIND OUT?

25 **A.** ME PERSONALLY?

1 Q. YES.

2 A. I DID NOT.

3 Q. YOU PARTICIPATED IN THE DECISION TO FIRE MS. NEWTON,
4 DIDN'T YOU?

5 A. THE DECISION? NO.

6 Q. YOU RECOMMENDED SHE BE FIRED, THOUGH, RIGHT?

7 A. YES.

8 Q. AT THE TIME THAT YOU MADE YOUR RECOMMENDATION THAT
9 MS. NEWTON'S CAREER AT SHELL BE ENDED, HAD YOU LOOKED AT ANY
10 OF HER PROGRESS REPORTS?

11 A. YES.

12 Q. WHEN DID YOU DO THAT?

13 A. I'M NOT SURE OF THE EXACT DATES. SOMETIME BEFORE THE
14 RECOMMENDATION FOR TERMINATION.

15 Q. AND YOU ARE AWARE THAT WHEN YOU LOOKED AT EVERY ONE OF
16 THOSE PROGRESS REPORTS, EVERYONE WHO GAVE THEM TO HER, SAID
17 THAT BASED ON THEIR RECOMMENDATION, SHE SHOULD REMAIN AS AN
18 EQUILON EMPLOYEE, RIGHT?

19 A. YES.

20 Q. INCLUDING THE ONE SHE GOT A WEEK BEFORE SHE WAS FIRED;
21 ISN'T THAT TRUE?

22 A. I DON'T RECALL THE TIMING OF THE ONE SHE GOT, BUT ALL THE
23 ONES SHE GOT SAID YES.

24 Q. YOU'RE AWARE OF ONE THAT WAS PUT TOGETHER THAT WAS NEVER
25 GIVEN TO HER AFTER SHE WAS FIRED, RIGHT?

1 **A.** YES.

2 **Q.** WHEN WAS THE DECISION TO FIRE HER MADE?

3 **A.** I DON'T RECALL THE EXACT DATE.

4 **Q.** ALL RIGHT. LET'S TAKE A LOOK AT EXHIBIT 49. THAT'S IN
5 YOUR BINDER AS WELL.

6 **THE WITNESS:** CAN I HAVE A NAPKIN, PLEASE?

7 **MS. NUGENT:** MAY I APPROACH, YOUR HONOR?

8 **THE COURT:** YOU MAY APPROACH.

9 (PAUSE IN THE PROCEEDINGS.)

10 **THE WITNESS:** THANK YOU.

11 I'M SORRY, WHAT EXHIBIT?

12 **BY MS. NUGENT:**

13 **Q.** IT'S EXHIBIT 49.

14 **A.** OKAY. OKAY.

15 **Q.** THERE ARE TWO EMAILS ON THE PAGE. DID YOU GET THE ONE AT
16 THE TOP?

17 **A.** YES.

18 **Q.** AND THIS WAS FROM ERIC PEREZ?

19 **A.** YES.

20 **MS. NUGENT:** YOUR HONOR, I WOULD LIKE TO OFFER
21 EXHIBIT 49 INTO EVIDENCE.

22 **MR. LAFAYETTE:** NO OBJECTION.

23 **THE COURT:** ADMITTED.

24 (PLAINTIFF'S EXHIBIT 49 RECEIVED IN EVIDENCE)

25 (DISPLAYED ON SCREEN.)

1 **BY MS. NUGENT:**

2 **Q.** TAKING A LOOK AT EXHIBIT 49 IN THE ORIGINAL EMAIL. IT IS
3 BEING BLOWN UP.

4 (DISPLAYED ON SCREEN.)

5 THAT WAS FORWARDED TO YOU BY MR. PEREZ JUST A COUPLE OF
6 HOURS AFTER HE GOT IT, RIGHT?

7 **A.** YES.

8 **Q.** AND THAT WAS ON SEPTEMBER 17TH?

9 **A.** YES.

10 **Q.** AND IN THE EMAIL THAT HE FORWARDED TO YOU, MS. NEWTON WAS
11 FOLLOWING UP ON HER REPORTS OF BEING SINGLED OUT, RIGHT?

12 **A.** YES.

13 **Q.** AND ABOUT THE STICKER?

14 **A.** YES.

15 **Q.** AND YOU DIDN'T DO ANYTHING WHEN HE FORWARDED YOU THIS
16 EMAIL TO FOLLOW UP ON EITHER ONE OF THOSE TWO ISSUES, DID YOU?

17 **A.** I DON'T BELIEVE THAT'S CORRECT.

18 **Q.** WELL, WHAT DID YOU DO?

19 **A.** SO I THINK AT THIS POINT ERIC AND I REVIEWED OUR NOTES
20 FROM THE PRIOR MEETING AND TRIED TO FIND ANY EXAMPLES OF WHERE
21 SHE THOUGHT SHE WAS BEING SINGLED OUT, AND THEN ERIC
22 INVESTIGATED THOSE.

23 **Q.** HE INVESTIGATED -- WELL, STRIKE THAT.

24 LOOKING AT THIS EMAIL, THE DATES ON IT, DOES THAT HELP YOU
25 REMEMBER WHEN THE DECISION TO FIRE MS. NEWTON WAS MADE?

1 **A.** NO.

2 **Q.** YOU DON'T KNOW HOW LONG AFTER?

3 **A.** I MEAN, IT WOULD HAVE BEEN SHORTLY AFTER BECAUSE HER
4 PROBATIONARY PERIOD WAS ENDING, BUT I DON'T REMEMBER THE DATE.

5 **Q.** YOU NEVER TALKED WITH JEFF FISCHER ABOUT MS. NEWTON, DID
6 YOU?

7 **A.** I DID NOT, NO.

8 **Q.** YOU NEVER TALKED WITH CAMERON CURRAN ABOUT HER EITHER?

9 **A.** NO.

10 **Q.** NEVER TALKED WITH RICHARD METCALF ABOUT MS. NEWTON EITHER,
11 DID YOU?

12 **A.** NO.

13 **Q.** AND YOU CAN'T RECALL ANY OF THE SPECIFICS OF ANY OF YOUR
14 CONVERSATIONS WITH ERIC PEREZ ABOUT MS. NEWTON, CAN YOU?

15 **A.** NO.

16 **Q.** YOU CAN'T RECALL ANYTHING THAT YOU AND THOR NYGAARD
17 DISCUSSED ABOUT HER; ISN'T THAT TRUE?

18 **A.** CORRECT.

19 **Q.** AND YOU NEVER DISCUSSED HER WITH ERIC PEREZ'S BOSS, MIKE
20 BECK, DID YOU?

21 **A.** I JUST DON'T RECALL IF I DID OR DIDN'T.

22 **Q.** AND YOU ALSO CAN'T RECALL WHETHER YOU DISCUSSED MS. NEWTON
23 WITH YOUR BOSS, LORI MARTINELLI; ISN'T THAT TRUE?

24 **A.** CORRECT.

25 **Q.** AND YOU DON'T THINK YOU EVER DISCUSSED HER WITH ANYONE

1 ELSE; ISN'T THAT TRUE?

2 **A.** CORRECT.

3 **Q.** SO YOU DIDN'T TALK TO MS. NEWTON ABOUT WHAT SHE WAS
4 COMPLAINING ABOUT, YOU CAN'T TELL THE JURY ABOUT ANY
5 CONVERSATIONS YOU HAD WITH ANYONE ELSE ABOUT HER, YOU KNEW SHE
6 WAS BEING TREATED UNEQUALLY ABOUT BEING SINGLED OUT AND ABOUT
7 THE STICKER, AND YOU RECOMMENDED THAT SHE BE FIRED AT SOME
8 POINT BETWEEN THE EMAIL WE JUST LOOKED AT, SEPTEMBER 17TH AND
9 THE DATE SHE WAS FIRED, SEPTEMBER 28TH; ISN'T THAT TRUE?

10 **MR. LAFAYETTE:** OBJECTION, THE QUESTION IS COMPOUND.

11 **THE COURT:** SUSTAINED.

12 **BY MS. NUGENT:**

13 **Q.** LET'S TALK ABOUT THAT MEETING WHERE MS. NEWTON WAS FIRED.
14 YOU WERE THERE, RIGHT?

15 **A.** YES.

16 **Q.** CAN YOU RECALL EVERYBODY WHO WAS THERE?

17 **A.** NO.

18 **Q.** YOU CAN'T RECALL ANYTHING THAT WAS SAID DURING THAT
19 MEETING, CAN YOU?

20 **A.** NO, I DON'T REMEMBER THAT MEETING VERY WELL.

21 **Q.** YOU CAN'T RECALL HOW MS. NEWTON REACTED TO BEING FIRED?

22 **A.** NO.

23 **Q.** HOW MANY TERMINATIONS HAVE YOU BEEN INVOLVED WITH WHERE
24 THE PERSON BEING TERMINATED HAD COMPLAINED ABOUT
25 DISCRIMINATION AND HARASSMENT?

1 **MR. LAFAYETTE:** OBJECTION, MISSTATES THE WITNESS'S
2 TESTIMONY, IT'S COMPOUND.

3 **THE COURT:** OVERRULED.

4 **MR. LAFAYETTE:** AND ARGUMENTATIVE.

5 **THE COURT:** OVERRULED.

6 **THE WITNESS:** I DON'T REMEMBER ALL OF MY
7 TERMINATIONS, BUT OFFHAND I AM NOT RECALLING ANY.

8 **BY MS. NUGENT:**

9 **Q.** THAT'S SOMETHING THAT WOULD MAKE AN IMPACT ON YOU AS AN
10 INDUSTRIAL RELATIONS PROFESSIONAL, ISN'T IT?

11 **A.** WHAT WOULD MAKE AN IMPACT ON ME? I'M SORRY.

12 **Q.** FIRING A WOMAN WHO HAD COMPLAINED ABOUT DISCRIMINATION AND
13 HARASSMENT.

14 **A.** I DON'T KNOW.

15 **MS. NUGENT:** I HAVE NOTHING FURTHER.

16 **THE COURT:** YOUR EXAM.

17 **MR. LAFAYETTE:** YES, YOUR HONOR.

18 **CROSS-EXAMINATION**

19 **BY MR. LAFAYETTE:**

20 **Q.** GOOD MORNING.

21 **A.** HELLO.

22 **Q.** LET ME ASK YOU SOMETHING. DO YOU REMEMBER EVERYTHING THAT
23 YOU DO EVERY DAY?

24 **A.** NO.

25 **Q.** ARE THERE DOCUMENTS THAT YOU SOMETIMES KEEP IN ORDER TO BE

1 ABLE TO REFRESH YOUR RECOLLECTION?

2 A. YES.

3 Q. WHEN YOUR DEPOSITION WAS TAKEN IN THIS CASE, WHO TOOK IT?

4 A. SONYA. I BELIEVE HER LAST NAME IS SMALLETS.

5 Q. WHEN SHE ASKED YOU QUESTIONS IN THE DEPOSITION, DID SHE
6 ALWAYS LET YOU LOOK AT DOCUMENTS SO THAT YOU COULD REFRESH
7 YOUR RECOLLECTION?

8 A. NO.

9 Q. YOU WERE ASKED ABOUT THE AUGUST 2 MEETING JUST A FEW
10 MINUTES AGO, WEREN'T YOU?

11 A. YES.

12 Q. DID YOU TAKE NOTES IN THAT MEETING?

13 A. YES.

14 Q. DID ANYONE SHOW YOU YOUR NOTES SO THAT YOU COULD USE THEM
15 TO REFRESH YOUR RECOLLECTION?

16 THE COURT: WHEN?

17 BY MR. LAFAYETTE:

18 Q. IN THE EXAMINATION, DID YOU HAVE IN FRONT OF YOU YOUR
19 NOTES FROM THE AUGUST 2 MEETING TO REFRESH YOUR RECOLLECTION?

20 THE COURT: I DON'T UNDERSTAND THE QUESTION, COUNSEL.

21 ARE WE TALKING ABOUT HERE? THE JURY KNOWS WHAT'S HERE.

22 AND IN TERMS OF THE DEPOSITION, IT'S NOT REALLY RELEVANT
23 EXCEPT FOR PURPOSES -- FOR CERTAIN EVIDENTIARY PURPOSES.

24 SO I DON'T KNOW WHAT THE POINT IS.

25 MR. LAFAYETTE: I'LL MOVE ON, YOUR HONOR.

1 **BY MR. LAFAYETTE:**

2 **Q.** I'LL HAVE THE WITNESS TAKE A LOOK AT IN THE BINDER THAT
3 WAS GIVEN TO HER, EXHIBIT 576.

4 **A.** OKAY.

5 **Q.** DO YOU KNOW WHAT THAT IS?

6 **A.** YES.

7 **Q.** WHAT IS THAT?

8 **A.** THOSE ARE MY NOTES FROM THE MEETING ON AUGUST 2ND.

9 **Q.** WHY DON'T YOU TELL ME HOW YOU WENT ABOUT PREPARING THOSE
10 NOTES FOR THE MEETING ON AUGUST 2ND.

11 **A.** SO FAIRLY COMMON, WHENEVER WE HAVE A MEETING THAT INVOLVES
12 THE UNION, WE TRY AND TAKE NOTES TO UNDERSTAND WHAT IS
13 DISCUSSED AND HAVE DOCUMENT OF WHAT WAS DISCUSSED.

14 **Q.** WHY DO YOU TAKE NOTES IN THE FIRST INSTANCE?

15 **A.** THE FIRST INSTANCE? I'M SORRY.

16 **Q.** WHY DO YOU TAKE NOTES AT ALL?

17 **A.** IT'S GOOD RECORDKEEPING, DOCUMENTATION.

18 **Q.** TAKE A LOOK AT THIS AND TELL ME IF ALL OF THE HANDWRITING
19 ON THIS DOCUMENT IS YOURS.

20 **A.** YES.

21 **Q.** ALL RIGHT.

22 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS INTO
23 EVIDENCE, YOUR HONOR.

24 **MS. NUGENT:** OBJECTION, HEARSAY.

25 **THE COURT:** DENIED -- THE OBJECTION IS SUSTAINED. WE

1 HAVE THE WITNESS. IF YOU HAVE QUESTIONS, SHE CAN ANSWER AND
2 SHE CAN REFRESH HER RECOLLECTION.

3 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

4 **THE COURT:** JUST A POINT ON THAT SO THAT JURORS KNOW.
5 BECAUSE SOMETIMES NOT EVEN LAW STUDENTS KNOW.

6 THE STANDARD KIND OF DOCUMENT THAT WOULD BE REQUESTED FOR
7 ADMISSION IS LIKE A POLICE REPORTS. POLICE REPORTS NEVER COME
8 INTO EVIDENCE. POLICE OFFICERS CAN USE THEM TO REFRESH THEIR
9 RECOLLECTION. BUT YOU HAVE THE WITNESS. RIGHT? THAT'S WHAT
10 WE ARE INTERESTED IN IS THE WITNESS'S TESTIMONY. BUT SHE CAN
11 USE THESE TO REFRESH.

12 TO THE EXTENT YOU NEED TO USE THEM TO REFRESH, I NEED TO
13 KNOW AND THE JURY NEEDS TO KNOW. YOU CAN'T READ THEM, OKAY?

14 **THE WITNESS:** OKAY.

15 **THE COURT:** YOU CAN READ THEM, TURN THEM OVER, AND
16 ANSWER A QUESTION, BUT THAT'S THE PROCESS.

17 **THE WITNESS:** OKAY. I UNDERSTAND.

18 **THE COURT:** GO AHEAD.

19 **BY MR. LAFAYETTE:**

20 **Q.** AT THE BEGINNING OF THE MEETING THAT YOU HAD -- THIS
21 MEETING ON AUGUST 2ND, DO YOU KNOW WHO CALLED THE MEETING TO
22 TAKE PLACE?

23 **A.** I BELIEVE IT WAS ERIC.

24 **Q.** DID YOU HAVE AN UNDERSTANDING WHY ERIC PEREZ WAS
25 REQUESTING A MEETING TAKE PLACE ON AUGUST 2ND?

1 **A.** YEAH, HE WANTED TO REVIEW THE TARDIES AND THE COACHINGS
2 THAT HAD GONE INTO HER PD LOG. AND NUMBER TWO, TO GIVE HER AN
3 OPPORTUNITY TO PROVIDE EXAMPLES OF HOW SHE FELT SHE WAS BEING
4 TREATED DIFFERENT.

5 **Q.** PRIOR TO THIS MEETING ON AUGUST 2ND THAT YOU ATTENDED, HAD
6 ERIC PEREZ SENT YOU ANY INFORMATION RELATIVE TO WHAT WAS TO BE
7 DISCUSSED?

8 **A.** YEAH. HE PROVIDED TALKING POINTS IN REGARDS TO THE
9 TARDIES AND COACHINGS THAT WERE GOING TO GO INTO HER PD LOG.

10 **Q.** DID YOU GET A COPY OF THAT?

11 **A.** YES.

12 **Q.** AND IN HIS TALKING POINTS, WAS THERE ANY DISCUSSION
13 WHATSOEVER OF ANYTHING THAT HE HAD DONE RELATIVE TO HER
14 TARDIES?

15 **MS. NUGENT:** OBJECTION.

16 **THE COURT:** SUSTAINED AS TO THE FORM.

17 **BY MR. LAFAYETTE:**

18 **Q.** DO YOU RECALL ANYTHING THAT HE ADVISED WITH REGARD TO THE
19 TARDIES?

20 **MS. NUGENT:** OBJECTION.

21 **THE COURT:** SUSTAINED. WE HAVE MR. PEREZ HERE. I
22 DON'T UNDERSTAND WHAT YOU ARE TRYING TO GET AT.

23 **MR. LAFAYETTE:** IT GOES TO HER STATE OF MIND GOING
24 INTO THE MEETING AS TO WHAT SHE UNDERSTOOD. THAT'S THE ONLY
25 REASON I'M ASKING, YOUR HONOR.

1 **MS. NUGENT:** IT'S STILL LEADING, YOUR HONOR.
2 OBJECTION.

3 **MR. LAFAYETTE:** IT'S NOT LEADING.

4 **THE COURT:** IT'S NOT LEADING.

5 ALL RIGHT. SO I'M GOING TO ALLOW IT IN FOR THE LIMITED
6 PURPOSE OF YOU -- THINK OF WHEN YOU ARE GOING INTO A MEETING.
7 RIGHT? IF SOMEONE TELLS YOU SOMETHING, IT'S REALLY NOT FOR
8 THE TRUTH, IT'S FOR WHAT SHE WAS THINKING BEFORE GOING INTO
9 THE MEETING. JUST FOR HER STATE OF MIND.

10 DOES THAT MAKE ANY SENSE? LET'S TRY IT. ASK THE ONE
11 QUESTION AND THEN WE ARE GOING TO TAKE OUR BREAK.

12 **MR. LAFAYETTE:** YES.

13 **BY MR. LAFAYETTE:**

14 **Q.** I'LL MAKE IT SIMPLE. DID SOMETHING HAPPEN AT THE
15 BEGINNING OF THE MEETING ON AUGUST 2ND THAT YOU HAD TO TAKE
16 CARE OF?

17 **MS. NUGENT:** OBJECTION, LEADING.

18 **THE COURT:** SUSTAINED.

19 LET'S TAKE OUR BREAK, LADIES AND GENTLEMEN.

20 ALL RIGHT. WE WILL TAKE A 15-MINUTE BREAK.

21 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

22 **THE COURT:** MS. LAYNE, PLEASE LEAVE THE COURTROOM.

23 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE WITNESS.)

24 **THE COURT:** OKAY. THE RECORD WILL REFLECT THAT THE
25 WITNESS HAS LEFT THE COURTROOM AND THE JURY.

1 SO CAN SOMEONE PLEASE GIVE ME A SENSE OF WHAT IS THE
2 PROBLEM HERE AND WHAT'S GOING ON?

3 **MR. LAFAYETTE:** I CAN, YOUR HONOR.

4 THEY HAVE ATTACKED HER CREDIBILITY BY FIRST GIVING HER --
5 TAKING HER DEPOSITION WITHOUT SHOWING HER DOCUMENTS. AND THIS
6 IS -- LET'S ME SAY WHAT I'VE GOT TO SAY.

7 AND THEN WHAT I AM CONCERNED ABOUT IS THEY HAVE ATTACKED
8 HER CREDIBILITY IN THIS COURTROOM BY NOT LETTING HER REFRESH
9 HER RECOLLECTION.

10 **THE COURT:** THAT'S YOUR JOB. SHE OBVIOUSLY -- LOOK,
11 SHE HAD TO PREPARE FOR TRIAL. THE FACT THAT YOU HAVE SOMEONE
12 SITTING AT THE TABLE WHO KNOWS ABSOLUTELY NOTHING SEEMS TO BE
13 ODD.

14 **MR. LAFAYETTE:** ALL I WANT TO DO IS CONDUCT MY
15 EXAMINATION TO UNDERCUT THAT. AND THAT'S MY JOB, YOUR HONOR.

16 **THE COURT:** RIGHT.

17 **MR. LAFAYETTE:** THAT'S ALL I'M TRYING TO DO. SO
18 HERE'S THE DEAL.

19 THIS AUGUST 2 MEETING, THERE ARE FIVE EMAILS THAT PREDATE
20 THAT THAT SHE'S INVOLVED IN RELATING TO THIS CONVERSATION THAT
21 IS GOING TO TAKE PLACE. AND I AM TRYING TO DEVELOP THAT.
22 BECAUSE OTHERWISE, THIS BECOMES MISLEADING IN THIS CASE RIGHT
23 NOW, AND THAT'S RELEVANT AND THAT'S ON POINT WITH WHAT THEY
24 DISCUSSED.

25 **THE COURT:** ALL RIGHT.

1 **MR. LAFAYETTE:** THAT'S WHAT I'M TRYING TO GET TO
2 BECAUSE I NEED TO BUILD -- SHE DIDN'T JUST DROP IN OUT THE SKY
3 IN THIS MEETING. THERE IS A LOT MORE THAT HAPPENED BEFORE
4 THAT HAPPENED.

5 AND SINCE THEY'VE OPENED THE DOOR ON THIS IN THEIR CASE --

6 **MS. NUGENT:** DON'T POINT AT ME, PLEASE.

7 **THE COURT:** HUH-UH.

8 **MS. NUGENT:** DON'T POINT AT ME.

9 **THE COURT:** HEY, HEY, HEY.

10 **MS. NUGENT:** SORRY.

11 **THE COURT:** YOU KNOW WHAT? YOU BOTH NEED TO CALM
12 DOWN.

13 **MS. NUGENT:** I APOLOGIZE, YOUR HONOR.

14 **THE COURT:** FINISH WHAT YOU HAVE TO SAY AND A LITTLE
15 MORE DECORUM. THIS IS FEDERAL COURT, NOT STATE COURT.

16 **MR. LAFAYETTE:** THANKS, YOUR HONOR.

17 I'M JUST TRYING TO BUILD UP THE RECORD LEADING UP TO THE
18 MEETING. THAT IS WHAT I WANT TO DO.

19 **THE COURT:** GIVE ME THE EXHIBITS THAT ARE --

20 **MR. LAFAYETTE:** THE FIRST ONE SHE GETS --

21 **THE COURT:** JUST GIVE ME THE NUMBER SO I CAN LOOK AT
22 THEM.

23 **MR. LAFAYETTE:** 547, 554, 556, 558, 561, 563, 566,
24 573.

25 **THE COURT:** WHAT'S YOUR RESPONSE? WHAT ARE YOU

1 TRYING TO HIDE? I'M TRYING TO FIGURE OUT WHAT'S GOING ON
2 HERE.

3 **MS. NUGENT:** OKAY. I'M NOT TRYING TO HIDE ANYTHING.
4 THE NOTES, EXHIBIT 33 AT TRIAL WERE EXHIBIT 29 AT HER
5 DEPOSITION. SHE TESTIFIED ABOUT THEM IN HER DEPOSITION. THEY
6 ARE HEARSAY. THEY ARE -- SHE CAN USE THEM TO REFRESH HER
7 RECOLLECTION. I'M THE ONLY ONE WHO CAN PUT THEM IN, BUT I'M
8 NOT GOING TO PUT THEM IN.

9 **THE COURT:** I DON'T DISAGREE WITH THAT. I DON'T KNOW
10 THAT YOU CAN -- THESE AREN'T ADMISSIBLE DOCUMENTS, AND YOU
11 KNOW THAT.

12 **MR. LAFAYETTE:** THESE ARE EMAILS THAT SHE RECEIVED
13 THAT I'M TALKING ABOUT NOW.

14 **THE COURT:** WHAT CAN I ANTICIPATE SO WE CAN GET THIS
15 EXAMINATION WORKING? IS THERE SOMETHING OUT THERE THAT
16 SOMEONE'S -- THAT SOMEONE IS TRYING TO HIDE, THAT SOMEONE IS
17 TRYING TO DO SOMETHING?

18 **MR. LAFAYETTE:** I'M NOT, YOUR HONOR. I'M TRYING TO
19 MAKE SURE THE RECORD IS COMPLETE. THAT'S WHAT THESE SHOW.
20 THESE ARE EMAILS THAT SHE RECEIVED LEADING UP TO THAT MEETING.

21 **THE COURT:** YOU HAVE TEN MINUTES LEFT ON YOUR BREAK.

22 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

23 **MS. NUGENT:** THANK YOU, YOUR HONOR.

24 (RECESS TAKEN AT 11:50 A.M.; RESUMED AT 12:00 P.M.)

25 **THE COURT:** ALL RIGHT. LET'S CALL THE JURY BACK.

1 (PROCEEDINGS HELD IN THE PRESENCE OF THE JURY.)

2 **THE COURT:** ALL RIGHT. WE'RE BACK ON THE RECORD.
3 THE RECORD WILL REFLECT THE JURY IS BACK. THE WITNESS IS
4 BACK.

5 YOU MAY PROCEED.

6 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

7 **BY MR. LAFAYETTE:**

8 **Q.** MA'AM, THERE'S A BLACK BINDER IN FRONT OF YOU. I WOULD
9 LIKE FOR YOU TO TURN TO WHAT'S KNOWN AS TAB 546, PLEASE.

10 DO YOU HAVE IT THERE?

11 **A.** YES.

12 **Q.** DO YOU RECOGNIZE THAT DOCUMENT?

13 **A.** YES.

14 **Q.** IS THAT AN EMAIL THAT YOU RECEIVED ON OR ABOUT JULY 18,
15 2016?

16 **A.** YES.

17 **Q.** WHO DID YOU RECEIVE IT FROM?

18 **A.** ERIC PEREZ.

19 **MR. LAFAYETTE:** YOUR HONOR, I WOULD LIKE TO MOVE THIS
20 DOCUMENT INTO EVIDENCE.

21 **MS. NUGENT:** IT'S HEARSAY, YOUR HONOR.

22 **THE COURT:** THE RULE WE HAVE BEEN FOLLOWING ON THIS
23 IS THAT IF A WITNESS IS PERSONALLY INVOLVED IN AN EMAIL, THESE
24 ARE STANDARD BUSINESS COMMUNICATIONS. I'VE ALLOWED THEM IN.
25 THE OBJECTION IS OVERRULED.

1 IT'S ADMITTED.

2 (DEFENDANT'S EXHIBIT 546 RECEIVED IN EVIDENCE)

3 **BY MR. LAFAYETTE:**

4 **Q.** PRIOR TO THIS EMAIL, HAD YOU RECEIVED ANY COMMUNICATIONS
5 FROM MR. PEREZ ALERTING YOU TO SOME CONCERNS INVOLVING
6 MS. NEWTON?

7 **A.** PRIOR TO THIS EMAIL?

8 **Q.** YES.

9 **A.** I DON'T -- NO.

10 **Q.** CAN YOU READ THE FIRST PARAGRAPH WHERE HE SENDS IT TO YOU?

11 **A.** YES.

12 **Q.** GO AHEAD.

13 **A.** THE FIRST PARAGRAPH? (READING)

14 I RECEIVED A CALL FROM CAMERON OVER THE WEEKEND. HE HAS
15 SOME RED FLAGS ABOUT CIARA'S PERFORMANCE AS AN OPERATOR. I
16 TOLD HIM BE SURE WE ARE DOCUMENTING. CAN YOU LET ME KNOW WHEN
17 HER PROBATION PERIOD IS OVER. THANK YOU.

18 **Q.** NOW I'M GOING TO ASK YOU TO TAKE A LOOK AT THE NEXT
19 EXHIBIT 547.

20 CAN YOU TELL ME WHAT THAT IS?

21 **A.** THAT LOOKS LIKE AN EMAIL FROM ERIC TO CAMERON DISCUSSING
22 CIARA, AND I AM COPIED.

23 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS DOCUMENT
24 INTO EVIDENCE.

25 **MS. NUGENT:** NO OBJECTION.

1 **THE COURT:** OKAY. I WOULD LIKE TO KNOW WHETHER SHE'S
2 REVIEWED IT, LOOKED AT IT, OR SOMETHING. JUST BECAUSE A
3 PERSON IS COPIED DOESN'T MEAN THEY ACTUALLY LOOK AT IT.

4 **BY MR. LAFAYETTE:**

5 **Q.** DID YOU REVIEW THIS DOCUMENT AT THE TIME YOU RECEIVED IT?

6 **A.** YEAH, I BELIEVE I DID.

7 **Q.** AND --

8 (DISPLAYED ON SCREEN.)

9 NOW, WHEN YOU READ THIS EMAIL, DID YOU SEE ANYTHING IN THE
10 EMAIL THAT INDICATED THAT ERIC PEREZ WAS RECOMMENDING AN
11 INAPPROPRIATE COURSE OF ACTION?

12 **A.** NO.

13 **Q.** TAKE A LOOK AT EXHIBIT 556.

14 (DISPLAYED ON SCREEN.)

15 IS EXHIBIT 556 ANOTHER EMAIL?

16 **A.** YES.

17 **Q.** WHO IS IT FROM?

18 **THE COURT:** COUNSEL, YOU NEED TO STOP PUBLISHING
19 THESE BEFORE I ADMIT THEM. YOU KNOW WHAT THE RULE IS.

20 **MR. LAFAYETTE:** IT'S INADVERTENT, YOUR HONOR. I
21 WASN'T TRYING TO DO IT.

22 **THE COURT:** I UNDERSTAND.

23 **MR. LAFAYETTE:** IT WAS INADVERTENT. I APOLOGIZE TO
24 THE COURT.

25

1 **BY MR. LAFAYETTE:**

2 **Q.** EXHIBIT 556 IS AN EMAIL. CAN YOU TELL ME WHAT IT IS?

3 **A.** IT'S AN EMAIL FROM ERIC TO ME REQUESTING THE GATE LOGS FOR
4 CIARA.

5 **Q.** AND DID YOU READ IT AT THE TIME YOU GOT IT?

6 **A.** YES.

7 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE IT INTO
8 EVIDENCE, YOUR HONOR.

9 **THE COURT:** IT'S ADMITTED.

10 (DEFENDANT'S EXHIBIT 556 RECEIVED IN EVIDENCE)

11 **BY MR. LAFAYETTE:**

12 **Q.** IN THIS EMAIL WAS THERE A DISCUSSION OF THE GATE LOGS?

13 **A.** YEAH. ERIC WAS REQUESTING THE GATE LOGS.

14 **Q.** AND WAS THERE A DISCUSSION OF WHY HE WAS DISCUSSING THE
15 GATE LOGS?

16 (DISPLAYED ON SCREEN.)

17 **A.** IT SAYS HE'S LOOKING INTO CIARA'S ALLEGATION.

18 **THE COURT:** SO DO YOU HAVE AN ANSWER TO HIS QUESTION?

19 **THE WITNESS:** YES.

20 **THE COURT:** HE DIDN'T ASK YOU TO READ --

21 **THE WITNESS:** I'M SORRY.

22 **THE COURT:** -- THE DOCUMENT.

23 **BY MR. LAFAYETTE:**

24 **Q.** AT THIS POINT WERE YOU AWARE OF ANY CLAIMS BY MS. NEWTON
25 THAT SHE WAS BEING TREATED DIFFERENTLY OTHER THAN WITH REGARD

1 TO TARDIES?

2 **A.** NO.

3 **Q.** DID YOU TAKE ANY ACTION TO GET THE GATE LOGS?

4 **A.** YEAH. THE REQUEST --

5 **MS. NUGENT:** THIS IS BEYOND THE SCOPE, YOUR HONOR.

6 **THE COURT:** I BELIEVE YOU RAISED THE CONTENT OF THAT
7 MEETING DURING YOUR EXAMINATION, DIDN'T YOU?

8 **MS. NUGENT:** I DID, YOUR HONOR, BUT THE GATE LOGS
9 WERE NOT -- THAT MEETING -- THE GATE LOGS WERE NOT DISCUSSED
10 IN THAT MEETING.

11 **MR. LAFAYETTE:** I -- I'M NOT GOING TO ARGUE THAT --

12 **THE COURT:** OVERRULED.

13 **MR. LAFAYETTE:** THANK YOU.

14 **BY MR. LAFAYETTE:**

15 **Q.** DID YOU TAKE ACTION TO GET THE GATE LOGS?

16 **A.** YES.

17 **Q.** TAKE A LOOK AT EXHIBIT 558.

18 HAVE YOU SEEN THAT EXHIBIT BEFORE?

19 **A.** YES.

20 **Q.** TELL ME WHAT THAT IS.

21 **A.** I SENT THE REQUEST FOR THE GATE LOGS TO OUR SECURITY
22 REPRESENTATIVE AND SHE SENT THEM BACK.

23 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THAT INTO
24 EVIDENCE, YOUR HONOR.

25 **THE COURT:** ANY OBJECTION?

1 **MS. NUGENT:** THE GATE LOGS THEMSELVES ARE HEARSAY. I
2 DON'T HAVE AN OBJECTION TO THE EMAIL.

3 **THE COURT:** ALL RIGHT. I'LL DEAL WITH IT LATER.
4 YOU CAN SHOW HER THE FIRST PAGE.

5 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

6 **BY MR. LAFAYETTE:**

7 **Q.** SO THE FIRST PAGE HERE, THAT'S AN EMAIL FROM YOU TO
8 KULDEEP?

9 **A.** KAUR, CORRECT.

10 **Q.** AND THEN WHAT'S THAT AT THE TOP OF THE PAGE?

11 **A.** I'M SORRY?

12 **Q.** THE TOP OF THE PAGE, THERE'S AN EMAIL FROM KULDEEP TO YOU?

13 **A.** OH, YEAH. SHE'S THE SECURITY REP. SHE RETURNED THE
14 REQUEST FOR GATE LOGS. SO SHE PROVIDED THE GATE LOGS.

15 **Q.** WHAT DID YOU DO WITH THE GATE LOGS WHEN YOU RECEIVED THEM?

16 **A.** I SENT THEM ON TO ERIC PEREZ.

17 **Q.** CAN YOU TAKE A LOOK AT EXHIBIT 561?

18 **A.** YES.

19 **Q.** DO YOU RECOGNIZE EXHIBIT 561?

20 **A.** YES.

21 **Q.** SPECIFICALLY, THE PART AT THE TOP OF THE DOCUMENT, WHAT IS
22 THAT?

23 **A.** IT'S JUST ME SENDING AN EMAIL TO ERIC SAYING WE PROVIDED
24 THE GATE LOGS THAT WAS REQUESTED. THERE WAS ONE MONTH WHERE
25 THE GATE LOG WASN'T WORKING, SO WE MISSED THAT ONE MONTH.

1 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THE DOCUMENT
2 INTO EVIDENCE, YOUR HONOR.

3 **THE COURT:** SAME ISSUE. I'LL DISCUSS IT LATER, BUT
4 YOU CAN SHOW HER THE TRANSMISSION.

5 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

6 **BY MR. LAFAYETTE:**

7 **Q.** IS THAT THE TRANSMISSION YOU WERE TALKING ABOUT?

8 **THE COURT:** IT IS NOT SHOWING UP.

9 **THE CLERK:** IT IS NOT SHOWING.

10 (DISPLAYED ON SCREEN.)

11 **BY MR. LAFAYETTE:**

12 **Q.** IS THAT THE TRANSMISSION YOU WERE TALKING ABOUT?

13 **A.** YES.

14 **Q.** THANK YOU.

15 NOW I'M GOING TO ASK YOU TO TAKE A LOOK AT EXHIBIT 563.

16 DO YOU KNOW WHAT THIS IS?

17 **A.** YEAH. IT WAS AN EMAIL --

18 **Q.** DON'T TELL ME, JUST ANSWER YES OR NO.

19 **A.** YES.

20 **Q.** YES, OKAY.

21 NOW, DID YOU RECEIVE THIS DOCUMENT ON OR ABOUT JULY 26,
22 2016?

23 **A.** YES.

24 **Q.** FROM WHOM?

25 **A.** ERIC PEREZ.

1 Q. ALL RIGHT. AND THIS IS BEFORE YOU GOT TO THE MEETING ON
2 AUGUST 2?

3 A. YES.

4 Q. DID YOU READ IT AT THE TIME YOU GOT IT?

5 A. YES.

6 MR. LAFAYETTE: I WOULD LIKE TO MOVE IT INTO
7 EVIDENCE, YOUR HONOR.

8 THE COURT: ANY OBJECTION?

9 MS. NUGENT: YES, AN OBJECTION TO THE SECOND PAGE OF
10 IT IS HEARSAY, BUT NOT TO THE EMAIL ITSELF.

11 THE COURT: THAT WOULD BE THE THIRD PAGE IS WHAT
12 YOU'RE OBJECTING TO?

13 MS. NUGENT: YES, I'M SORRY, 113.

14 THE COURT: WE'LL DEAL WITH THE GATE LOG ISSUES
15 LATER. THE FIRST TWO PAGES.

16 MR. LAFAYETTE: THANK YOU, YOUR HONOR.

17 (DISPLAYED ON SCREEN.)

18 BY MR. LAFAYETTE:

19 Q. NOW, UP UNTIL THIS POINT, DID YOU HAVE AN UNDERSTANDING AS
20 TO WHAT IT WAS THAT MR. PEREZ HAD BEEN DOING WITH THE GATE
21 LOGS? YES OR NO.

22 A. YES.

23 Q. HOW DID YOU GET AN UNDERSTANDING AS TO WHAT HE HAD BEEN
24 DOING WITH THE GATE LOGS?

25 A. FROM ERIC.

1 Q. WHAT WAS IT YOU UNDERSTOOD HE HAD DONE WITH THOSE GATE
2 LOGS?

3 A. HE HAD REVIEWED THE ENTRANCE OR WHEN THE BADGE FOR THAT
4 INDIVIDUAL ENTERED THE FACILITY TO SEE WHAT TIME TO TRY TO SEE
5 HOW MANY TIMES INDIVIDUALS HAD BEEN BADGED INTO THE FACILITY
6 AFTER 6:15.

7 Q. AND DID YOU UNDERSTAND -- WELL --

8 THE COURT: NO LEADING.

9 MR. LAFAYETTE: I CHANGED IT, YOUR HONOR.

10 BY MR. LAFAYETTE:

11 Q. DID HE PROVIDE YOU AT ANY POINT IN TIME WITH A SUMMARY OF
12 WHAT HIS FINDINGS WERE?

13 A. YEAH.

14 Q. IS THIS IT?

15 A. UH-HUH, YES.

16 Q. NOW, I'M GOING TO GO FURTHER HERE. THE BOTTOM, DID HE
17 PROVIDE A WRITTEN SUMMARY?

18 A. YES.

19 Q. SO DID HE CALCULATE HOW MANY TIMES HE THOUGHT MS. NEWTON
20 HAD BEEN LATE BASED UPON THE GATE LOG REPORT?

21 A. YES.

22 Q. DID HE PROVIDE WHAT HE THOUGHT WERE THE LATENESS FOR HER
23 THREE COWORKERS?

24 MS. NUGENT: LEADING.

25 THE COURT: SUSTAINED.

1 **BY MR. LAFAYETTE:**

2 **Q.** DID HE DO ANYTHING TO -- DO YOU KNOW IF HE EVALUATED THE
3 TARDINESS OF HER COWORKERS?

4 **A.** YES. HE REQUESTED THEIR GATE LOGS AS WELL.

5 **Q.** AND DID YOU RECEIVE A SUMMARY OF HIS FINDINGS WHERE HE WAS
6 ATTEMPTING TO EVALUATE WHETHER OR NOT SHE HAD BEEN TREATED
7 DIFFERENTLY WITH REGARD TO TARDIES AND HER COWORKERS?

8 **A.** YES.

9 **Q.** IS THIS IT?

10 **A.** YES.

11 **Q.** WHEN YOU READ IT, DID YOU HAVE AN UNDERSTANDING AS TO
12 WHETHER OR NOT SHE HAD BEEN TREATED DIFFERENTIALLY THAN HER
13 COWORKERS?

14 **MS. NUGENT:** LEADING.

15 **THE COURT:** SUSTAINED.

16 **BY MR. LAFAYETTE:**

17 **Q.** DID YOU COME TO A CONCLUSION AS TO WHETHER OR NOT SHE HAD
18 BEEN TREATED UNFAIRLY?

19 **A.** IT DIDN'T APPEAR SHE WAS TREATED UNFAIRLY. BASIS, THE
20 INFORMATION PROVIDED, SHE HAD BEEN TARDY SIX TIMES, AND IT WAS
21 DOCUMENTED TWICE.

22 AND TWO OTHER OPERATORS HAD NOT BEEN TARDY AT ALL, AND ONE
23 OPERATOR HAD BEEN TARDY ONCE, AND THAT HAD NOT BEEN
24 DOCUMENTED.

25 **Q.** NOW TAKE A LOOK AT EXHIBIT 566.

1 YES OR NO, DO YOU KNOW WHAT THIS IS?

2 **A.** YES.

3 **Q.** WHAT IS, WITHOUT GOING INTO THE DETAILS OF THE DOCUMENT,
4 WHAT IS IT?

5 **A.** IT'S ERIC'S TALKING POINTS GOING INTO THE MEETING ON
6 AUGUST 2ND.

7 **Q.** OKAY. DID YOU READ IT AT THE TIME YOU GOT IT?

8 **A.** YES.

9 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS DOCUMENT
10 INTO EVIDENCE, YOUR HONOR.

11 **MS. NUGENT:** SAME OBJECTION AS TO THE THIRD PAGE.
12 OTHERWISE NO OBJECTION TO THE FIRST TWO.

13 **THE COURT:** ALL RIGHT. SAME RULING.

14 **MR. LAFAYETTE:** THE FIRST TWO PAGES, YOUR HONOR?

15 **THE COURT:** YES.

16 **MR. LAFAYETTE:** THANK YOU.

17 (DISPLAYED ON SCREEN.)

18 **BY MR. LAFAYETTE:**

19 **Q.** FIRST PAGE HE WRITES:

20 CHRISTINE, HERE IS MY DRAFT OF THE DISCUSSION WITH CIARA.

21 AND THEN HE SAID AT THE LAST SENTENCE THERE:

22 WE WILL FINISH UP WITH HER ALLEGATIONS OF BEING TREATED
23 DIFFERENTLY AND UNFAIR SINGLED OUT.

24 DO YOU SEE THAT?

25 **A.** YES.

1 Q. LET'S LOOK AT THE SECOND PAGE.

2 (DISPLAYED ON SCREEN.)

3 WHAT DID YOU UNDERSTAND THAT TO BE?

4 A. THAT WAS A SUMMARY OF HIS FINDINGS IN REGARDS TO THE
5 TARDIES.

6 Q. THANK YOU.

7 TAKE A LOOK AT EXHIBIT 573, PLEASE. IS THIS AN EMAIL
8 DATED JULY 1, 2016?

9 A. AUGUST 1.

10 Q. AUGUST 1.

11 A. YES.

12 Q. DID YOU RECEIVE IT ON OR ABOUT THAT DATE?

13 A. YES.

14 Q. DID YOU RECEIVE -- DID YOU REVIEW IT?

15 A. YES.

16 Q. BASED UPON THIS DOCUMENT, DID YOU HAVE AN UNDERSTANDING
17 ONE WAY OR THE OTHER AS TO WHETHER OR NOT SOME NOTES WOULD BE
18 PRESENTED AT THE MEETING BY MS. NEWTON?

19 A. YES. I BELIEVED SHE WAS GOING TO PROVIDE NOTES.

20 MR. LAFAYETTE: YOUR HONOR, I WOULD LIKE TO MOVE THIS
21 DOCUMENT INTO EVIDENCE.

22 MS. NUGENT: NO OBJECTION, YOUR HONOR.

23 THE COURT: IT'S ADMITTED.

24 (DEFENDANT'S EXHIBIT 573 RECEIVED IN EVIDENCE)

25 (DISPLAYED ON SCREEN.)

1 **BY MR. LAFAYETTE:**

2 **Q.** SAYS HERE SHE HAS NOTES THAT SHE HAS BEEN TAKING OF
3 INEQUALITY THAT SHE WILL BRING IN.

4 DO YOU SEE THAT?

5 **A.** YES.

6 **Q.** THIS IS ON AUGUST 1, 7:59 A.M. THE DAY BEFORE THE
7 AUGUST 22 MEETING, RIGHT?

8 **A.** THE AUGUST 2ND MEETING, YES.

9 **Q.** AUGUST 2ND MEETING. THANK YOU.

10 DID MS. NEWTON BRING IN ANY NOTES FOR THE AUGUST 2
11 MEETING?

12 **A.** NO.

13 **Q.** DID MS. NEWTON PROVIDE ANY SPECIFIC INCIDENCES WHERE SHE
14 CLAIMS SHE WAS TREATED DIFFERENTLY OTHER THAN THE TARDIES?

15 **MS. NUGENT:** LEADING.

16 **THE COURT:** WHAT DID YOU SAY?

17 **MR. LAFAYETTE:** LEADING.

18 **THE COURT:** SUSTAINED.

19 **BY MR. LAFAYETTE:**

20 **Q.** IN THE MEETING, DID MS. NEWTON DESCRIBE ANY SPECIFIC
21 INCIDENCES OF WHERE SHE WAS TREATED DIFFERENTLY OTHER THAN THE
22 TARDIES?

23 **A.** NO.

24 **Q.** NOW, DID YOU TAKE MEETINGS DURING -- NOTES DURING THAT
25 MEETING?

1 **MS. NUGENT:** ON AUGUST 2ND?

2 **BY MR. LAFAYETTE:**

3 **Q.** ON AUGUST 2ND?

4 **A.** YES.

5 **Q.** IN THAT MEETING WHILE YOU WERE TAKING NOTES, WHAT HAPPENED
6 AT THE BEGINNING OF THE MEETING?

7 **A.** AT THE START OF THE MEETING SHE STEPPED OUT TO MEET WITH
8 HER TWO UNION STEWARDS. I DON'T KNOW APPROXIMATELY HOW LONG,
9 AND THEN WE STARTED THE MEETING.

10 **Q.** OKAY. ONCE YOU STARTED THE MEETING, DID SOMETHING HAPPEN?

11 **A.** DURING THE MEETING SHE, UNDERNEATH THE TABLE, PICKED UP
12 HER CELL PHONE AND TRIED TO RECORD THE MEETING.

13 **Q.** DID SHE ANNOUNCE THAT SHE WAS GOING TO TRY AND RECORD THIS
14 MEETING?

15 **A.** NO. I WAS JUST SITTING NEXT TO HER AND I HAPPENED TO SEE
16 IT.

17 **Q.** THEN WHAT DID YOU DO?

18 **A.** I ASKED HER IF SHE WAS RECORDING, AND SHE SAID YES.

19 **Q.** AND THEN WHAT HAPPENED?

20 **A.** I JUST SAID I DID NOT CONSENT.

21 **Q.** OKAY. WHY DID YOU DO THAT?

22 **A.** BECAUSE I DID NOT COME INTO THAT MEETING PREPARED TO BE
23 RECORDED NOR TO RECORD THE CONVERSATION.

24 **Q.** NOW DURING THE MEETING, DID -- WAS THERE AN AGENDA THAT
25 WAS FOLLOWED FOR THIS MEETING?

1 **A.** WE FOLLOWED ERIC'S TALKING POINTS TO GO THROUGH
2 PERFORMANCE AND TARDIES FIRST, AND THEN AN OPPORTUNITY FOR HER
3 TO SHARE EXAMPLES.

4 **Q.** OKAY.

5 SO WHEN YOU GOT TO TALKING ABOUT THE TARDIES, DID
6 MR. PEREZ DESCRIBE FOR EVERYBODY IN THE ROOM WHAT HE HAD FOUND
7 ABOUT THE TARDIES?

8 **A.** YEAH, I BELIEVE HE DID.

9 **Q.** OKAY. DID MS. NEWTON SAY ANYTHING RELATIVE TO HIS
10 FINDINGS ABOUT THE TARDIES?

11 **A.** I DON'T RECALL.

12 **Q.** TAKE A LOOK AT YOUR NOTES THEN IF YOU CAN'T RECALL AND SEE
13 IF THERE'S A REFERENCE THERE.

14 **A.** WHAT EXHIBIT IS IT?

15 **Q.** IN THE SMALLER BINDER, THEY ARE EXHIBIT 576.

16 **THE COURT:** WHAT YOU NEED TO DO IS TAKE A LOOK AND
17 TELL US WHEN YOU'RE DONE.

18 **THE WITNESS:** 576.

19 **MR. LAFAYETTE:** IT'S A REALLY SMALL BINDER LIKE THIS
20 (INDICATING).

21 **THE WITNESS:** I GOT IT. I SEE IT.

22 **MR. LAFAYETTE:** OKAY.

23 **THE WITNESS:** OKAY.

24 **BY MR. LAFAYETTE:**

25 **Q.** DID SHE SAY ANYTHING RELATIVE TO HER -- ON THE TARDIES?

1 **A.** YEAH. SHE SAID THAT SHE DIDN'T FEEL SHE WAS BEING TREATED
2 THE SAME BECAUSE THE OTHERS BROUGHT IN DONUTS AND DID NOT HAVE
3 IT DOCUMENTED.

4 **Q.** AT THAT POINT DID SHE SAY ANYTHING THAT LED YOU TO
5 BELIEVE -- DID SHE SAY ANYTHING CONCERNING HER GENDER WITH
6 REGARD TO THE TARDIES?

7 **A.** NO.

8 **Q.** DID SHE OFFER ANY OTHER EXPLANATION ABOUT THIS OTHER THAN
9 DONUTS?

10 **A.** NO. ONLY DONUTS.

11 **Q.** NOW, DURING THE MEETING, WAS THERE A DISCUSSION OF SOME OF
12 THE ITEMS ON HER PD LOG?

13 **A.** YES.

14 **Q.** DID ANYBODY PRESENT WHAT THEY HAD FOUND RELATIVE TO THOSE
15 ITEMS ON HER PD LOG?

16 **A.** YEAH. I THINK ERIC WENT THROUGH THE INVESTIGATIONS AND
17 THE FINDINGS.

18 **Q.** DID SHE, IN THAT MEETING, DENY THAT SHE HAD COMMITTED ANY
19 OF THOSE VIOLATIONS REFLECTED ON HER PD LOG?

20 **MS. NUGENT:** OBJECTION, ARGUMENTATIVE, LACKS
21 FOUNDATION, LEADING.

22 **THE COURT:** OVERRULED.

23 **THE WITNESS:** NO, I DON'T BELIEVE SHE DID.

24 **BY MR. LAFAYETTE:**

25 **Q.** OKAY.

1 SO ONCE MR. PEREZ WENT THROUGH THE TARDIES AND WENT
2 THROUGH THE PD LOGS, OKAY, WHAT HAPPENED?

3 **A.** I THINK WE TRANSITIONED THE DISCUSSION TO CIARA TO GIVE
4 HER AN OPPORTUNITY TO SHARE HOW SHE BELIEVED SHE WAS BEING
5 TREATED DIFFERENTLY.

6 **Q.** NOW, WAS SHE IN THIS MEETING SOLELY BY HERSELF?

7 **THE COURT:** STAND NEXT TO THE MIC.

8 **THE WITNESS:** SHE HAD TWO UNION STEWARDS.

9 **BY MR. LAFAYETTE:**

10 **Q.** TWO UNION STEWARDS?

11 **A.** CORRECT.

12 **Q.** NOW, WHEN SHE WAS GIVEN AN OPPORTUNITY TO POINT OUT THINGS
13 WHERE SHE THOUGHT SHE WAS BEING TREATED DIFFERENTLY, THAT IS
14 WHERE WE ARE GOING TO FOCUS RIGHT NOW, OKAY?

15 **A.** OKAY.

16 **Q.** FIRST, DID SHE PRODUCE THE NOTES?

17 **A.** NO.

18 **Q.** NO.

19 DID SHE IDENTIFY ANYBODY WHO SHE THOUGHT SHOULD HAVE BEEN
20 DISCIPLINED BUT WHO WAS NOT?

21 **A.** NO.

22 **Q.** DID SHE IDENTIFY ANYBODY WHO SHE THOUGHT HAD BEEN TARDY
23 BUT WHO HAD NOT BEEN COACHED AND COUNSELED?

24 **A.** NO.

25 **Q.** DID SHE IDENTIFY ANY EVENT WHERE SHE THOUGHT -- WHERE SHE

1 SAID SOMETHING TO THE EFFECT OF, HERE, THIS SHOWS I'VE BEEN
2 SINGLED OUT.

3 DID SHE DO THAT?

4 **A.** NO.

5 **Q.** DID SHE IDENTIFY ANY STATEMENTS THAT SHE THOUGHT WERE
6 WRONG FROM CAMERON CURRAN?

7 **A.** NO.

8 **Q.** YOU TESTIFIED EARLIER TODAY THAT SHE MADE SOME COMMENTS
9 ABOUT SOME STL, A TEMPORARY TEAM LEADER SOMEONE?

10 **A.** SHIFT TEAM LEADER.

11 **Q.** OKAY. I THINK YOU SAID SOMETHING ABOUT... TAKE A LOOK AT
12 EXHIBIT -- THE SAME EXHIBIT YOU HAVE IN FRONT OF YOU, 576.
13 AND --

14 **THE COURT:** SUSTAINED.

15 DO YOU HAVE A QUESTION?

16 **MR. LAFAYETTE:** YES, YOUR HONOR.

17 **BY MR. LAFAYETTE:**

18 **Q.** SO WHEN YOU LEFT THIS MEETING, DID YOU HAVE AN
19 UNDERSTANDING OF WHO THE PEOPLE WERE THAT SHE THOUGHT SHE HAD
20 NOT BEEN TREATED AS WELL AGAINST?

21 **A.** NO.

22 **Q.** DID YOU HAVE AN UNDERSTANDING OF ANY SPECIFIC EVENT WHERE
23 SHE THOUGHT SHE WAS BEING SINGLED OUT?

24 **A.** NO.

25 **Q.** HAD YOU ASKED FOR THAT INFORMATION?

1 **A.** AT THAT PORTION OF THE MEETING, YES.

2 **Q.** AND AT THAT PORTION OF THE MEETING, DID HER UNION STEWARDS
3 OFFER UP ANY SPECIFIC INFORMATION?

4 **A.** NO.

5 **Q.** DID THEY OFFER UP THE NAMES OF ANY INDIVIDUALS?

6 **A.** NO.

7 **Q.** DID THEY SAY THAT THERE WAS SOME EVENT THAT HAD TAKEN
8 PLACE THAT THEY COULD DIRECT YOU TO TO SAY THIS HAPPENED AND
9 THIS IS NOT IN THAT PERSON'S PD LOG?

10 **A.** NO.

11 **Q.** SO DID YOU GUYS JUST LEAVE IT AT THAT, OR WAS THERE SOME
12 AGREEMENT MADE?

13 **A.** THE AGREEMENT WAS --

14 **Q.** YES OR NO.

15 **A.** THERE WAS AN AGREEMENT, YES.

16 **Q.** WHAT WAS THE AGREEMENT?

17 **A.** THE AGREEMENT WAS THAT AFTER CIARA'S LONG CHANGE, SHE
18 WOULD FOLLOW BACK UP WITH US AND PROVIDE SPECIFIC EXAMPLES AND
19 ANY WITNESSES.

20 **Q.** NOW YOU'VE REFERENCED SOMETHING CALLED A LONG CHANGE,
21 RIGHT? DO YOU KNOW WHEN CIARA NEWTON'S LONG CHANGE ENDED?

22 **A.** PROBABLY SOMETIME MID-AUGUST.

23 **Q.** SOMETIME IN AUGUST.

24 AND WHEN HER LONG CHANGE ENDED, DID SHE PROVIDE TO YOU ANY
25 NOTES IDENTIFYING PEOPLE AND EVENTS?

1 **A.** NO.

2 **Q.** DID SHE CALL YOU ON THE PHONE AND TELL YOU THESE ARE THE
3 PEOPLE AND THESE ARE THE EVENTS THAT I THINK YOU SHOULD LOOK
4 INTO?

5 **MS. NUGENT:** OBJECTION.

6 **THE COURT:** SUSTAINED.

7 **BY MR. LAFAYETTE:**

8 **Q.** DID SHE CALL YOU ON THE PHONE?

9 **A.** NO.

10 **Q.** DID HER UNION STEWARDS COME TO YOU WITH ANY ADDITIONAL
11 INFORMATION?

12 **A.** NO.

13 **Q.** AS OF AUGUST 29, HAD YOU RECEIVED ANY ADDITIONAL
14 INFORMATION FROM MS. NEWTON RELATIVE TO HER CLAIM THAT SHE WAS
15 BEING TREATED DIFFERENTLY?

16 **A.** NO.

17 **Q.** HAD YOU RECEIVED ANY INFORMATION RELATIVE TO HER CLAIM
18 THAT SHE THOUGHT SHE WAS BEING SINGLED OUT?

19 **A.** NO.

20 **Q.** ON AUGUST 29, DID YOU RECEIVE AN EMAIL FROM MR. PEREZ?

21 **A.** YES.

22 **Q.** TAKE A LOOK AT EXHIBIT 577.

23 DID YOU RECEIVE THIS?

24 **A.** YES.

25 **Q.** DID YOU REVIEW IT?

1 **A.** YES.

2 **Q.** ALL RIGHT.

3 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE IT INTO
4 EVIDENCE, YOUR HONOR.

5 **MS. NUGENT:** I HAVE NO OBJECTION, ALTHOUGH I THINK IT
6 IS ALREADY IN EVIDENCE UNDER A DIFFERENT NUMBER.

7 **THE COURT:** I DON'T KNOW THAT FOR A FACT. SO I'LL
8 ADMIT IT. 577.

9 (DEFENDANT'S EXHIBIT 577 RECEIVED IN EVIDENCE)
10 (DISPLAYED ON SCREEN.)

11 **BY MR. LAFAYETTE:**

12 **Q.** THIS IS AN EMAIL YOU RECEIVED FROM ERIC PEREZ?

13 **A.** YES.

14 **Q.** FOCUS ON THE TOP.

15 DID YOU READ THIS?

16 **A.** YES.

17 **Q.** DID YOU GET AN UNDERSTANDING ONE WAY OR THE OTHER AS TO
18 WHETHER OR NOT HE HAD BEEN ABLE TO SECURE SOME ADDITIONAL
19 INFORMATION FROM MS. NEWTON CONCERNING HER CLAIMS OF BEING
20 TREATED DIFFERENTLY IN THE WORKPLACE?

21 **A.** HE HAD NOT.

22 **Q.** SO, AS OF AUGUST 29, YOU HADN'T RECEIVED ANYTHING MORE,
23 RIGHT?

24 HE ALSO BROUGHT UP SOMETHING ELSE IN THIS DOCUMENT, DIDN'T
25 HE?

1 **A.** YES.

2 **Q.** HE BROUGHT UP THIS (INDICATING).

3 (DISPLAYED ON SCREEN.)

4 **A.** YES.

5 **Q.** THEN HE SAID SHE DOESN'T KNOW IF IT WAS MEANT FOR HER OR
6 NOT.

7 IS THAT WHAT HE TOLD YOU?

8 **MS. NUGENT:** OBJECTION, LEADING.

9 **THE COURT:** SUSTAINED.

10 **BY MR. LAFAYETTE:**

11 **Q.** DID YOU READ THAT PASSAGE?

12 **A.** YES.

13 **Q.** SO, DID YOU TALK TO ERIC PEREZ ABOUT THIS?

14 **A.** I BELIEVE I DID.

15 **Q.** WHAT IS YOUR BEST RECOLLECTION OF WHAT YOU SAID TO ERIC
16 PEREZ?

17 **A.** MY BEST RECOLLECTION IS I TOLD HIM NOT TO SEND OUT AN
18 EMAIL TO THE DEPARTMENT UNTIL HE ASKS AROUND AND TRIES TO FIND
19 OUT WHO BROUGHT IN THE STICKER.

20 **Q.** ALL RIGHT.

21 NOW, DID YOU EVER RECEIVE ANY INFORMATION FROM MR. PEREZ
22 THAT HE HAD FOUND OUT WHO BROUGHT THE STICKER INTO THE
23 WORKPLACE?

24 **A.** NO.

25 **Q.** SO NOW AFTER THAT HAPPENS, DID YOU EVER GET -- DID

1 MS. NEWTON EVER CONTACT YOU AND PROVIDE INFORMATION RELATIVE
2 TO HOW SHE THOUGHT SHE WAS BEING TREATED DIFFERENTLY?

3 **A.** NO.

4 **Q.** DID HER UNION EVER COME TO YOU WITH ANY SUCH INFORMATION?

5 **A.** NO.

6 **Q.** SO NOW I WANT YOU TO TAKE A LOOK AT A DOCUMENT THAT IS
7 REFERENCED AS EXHIBIT 581.

8 THIS IS AN EMAIL THAT YOU RECEIVED FROM MR. PEREZ ON
9 SEPTEMBER 19.

10 **A.** YES.

11 **MS. NUGENT:** EXCUSE ME. I NEED TO GET THERE.

12 YOU SAID 531?

13 **THE COURT:** 581.

14 **MR. LAFAYETTE:** 581.

15 **BY MR. LAFAYETTE:**

16 **Q.** DO YOU HAVE AN UNDERSTANDING AS TO WHY -- SO DID YOU
17 RECEIVE THIS DOCUMENT?

18 **A.** YES.

19 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS DOCUMENT
20 INTO EVIDENCE, YOUR HONOR.

21 **MS. NUGENT:** NO OBJECTION.

22 **THE COURT:** ADMITTED.

23 (DEFENDANT'S EXHIBIT 581 RECEIVED IN EVIDENCE)

24 (DISPLAYED ON SCREEN.)

1 **BY MR. LAFAYETTE:**

2 **Q.** DO YOU KNOW WHY IT IS MR. PEREZ IS SENDING YOU THIS EMAIL
3 ON SEPTEMBER 19, 2016?

4 **A.** YES.

5 **Q.** WHY?

6 **A.** ERIC AND I, WHEN WE DID NOT GET FURTHER EXAMPLES FROM
7 CIARA, HAD GONE BACK THROUGH THE NOTES ON AUGUST 2ND TO
8 DETERMINE ANY AREAS WHERE WE BELIEVE SHE MAY HAVE BEEN
9 INDICATING DIFFERENT TREATMENT.

10 AND ERIC WAS GOING TO GO AND GATHER ADDITIONAL INFORMATION
11 ON THOSE INCIDENTS. THIS EMAIL IN PARTICULAR WAS AROUND THE
12 TARDIES AND WHAT TIME THEY WERE INSTRUCTED TO COME INTO WORK.

13 **Q.** SO WHY ARE YOU AND MR. PEREZ DOING THIS AT THIS POINT IN
14 TIME WHEN MS. NEWTON HASN'T SHARED THIS --

15 **THE COURT:** CAN YOU STOP LEAVING THE MIC?

16 **MR. LAFAYETTE:** YES, YOUR HONOR.

17 **BY MR. LAFAYETTE:**

18 **Q.** WHY ARE YOU DOING THIS WHEN SHE HASN'T SHARED INFORMATION
19 WITH YOU?

20 **A.** WELL, SHE MENTIONED IN THE AUGUST 2ND MEETING SHE WAS
21 BEING TREATED DIFFERENT. WE DIDN'T GET ANY FURTHER EXAMPLES,
22 SO WE TRIED TO GO BACK THROUGH THE EXAMPLES WE THOUGHT SHE HAD
23 PROVIDED.

24 **Q.** ALL RIGHT.

25 SO NOW WHAT ALL DID YOU GUYS DO AT THIS POINT TO TRY AND

1 FIND OUT MORE ABOUT WHAT SHE WAS SAYING?

2 **A.** SO I KNOW ERIC WENT AND INTERVIEWED JEFF FISCHER AND
3 CAMERON CURRAN AS FOLLOW UP.

4 **Q.** I WOULD LIKE YOU TO TAKE A LOOK AT EXHIBIT 594.

5 IS THAT AN EMAIL THAT YOU RECEIVED?

6 **A.** YES.

7 **Q.** WHEN DID YOU GET IT?

8 **A.** SEPTEMBER 21ST.

9 **Q.** AND THIS EMAIL THAT YOU RECEIVED ON SEPTEMBER 21ST, DID
10 YOU REVIEW IT?

11 **A.** YES.

12 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THE DOCUMENT
13 INTO EVIDENCE, YOUR HONOR.

14 **MS. NUGENT:** NO OBJECTION.

15 **THE COURT:** ADMITTED.

16 (DEFENDANT'S EXHIBIT 594 RECEIVED IN EVIDENCE)

17 (DISPLAYED ON SCREEN.)

18 **BY MR. LAFAYETTE:**

19 **Q.** SO TELL ME WHAT IT IS.

20 **A.** IT'S INTERVIEW NOTES OF JEFF FISCHER, ERIC PEREZ, AND GUY
21 ROZAR CONDUCTED THE INTERVIEW.

22 **Q.** SO THAT'S THE FIRST PART OF THIS, RIGHT?

23 I WANT YOU TO TAKE A LOOK NOW AT BATES STAMP PAGE 126,
24 THREE PAGES IN. WHAT'S THAT?

25 **A.** IT'S INTERVIEW NOTES OF GUY ROZAR AND ERIC PEREZ OF

1 CAMERON.

2 Q. ALL RIGHT.

3 OTHER THAN THE TWO OF THEM, HAD MS. NEWTON IDENTIFIED ANY
4 OTHER PEOPLE RELATIVE TO HER CLAIMS OF BEING TREATED
5 DIFFERENTLY?

6 A. NO.

7 Q. SO NOW I WOULD LIKE YOU TO TAKE A LOOK AT EXHIBIT 595,
8 PLEASE.

9 A. OKAY.

10 Q. DID YOU RECEIVE THIS DOCUMENT BACK IN SEPTEMBER OF 2016?

11 A. YES.

12 Q. AND TAKE A LOOK AT EXHIBIT 49, PLEASE.

13 A. EXHIBIT 49?

14 Q. IT IS IN THAT SMALLER BINDER.

15 A. YES.

16 Q. DOES EXHIBIT 49 SHOW UP AT THE BOTTOM OF EXHIBIT 595?

17 A. YES.

18 MR. LAFAYETTE: I WOULD LIKE TO MOVE EXHIBIT 595 INTO
19 EVIDENCE, YOUR HONOR.

20 MS. NUGENT: NO OBJECTION.

21 THE COURT: ADMITTED.

22 (DEFENDANT'S EXHIBIT 595 RECEIVED IN EVIDENCE)

23 (DISPLAYED ON SCREEN.)

24 BY MR. LAFAYETTE:

25 Q. DID MR. PEREZ PROVIDE A RESPONSE TO MS. NEUMAN'S --

1 MS. NEWTON'S QUESTION?

2 MS. NUGENT: OBJECTION, LEADING.

3 THE COURT: OVERRULED. YOU CAN ANSWER.

4 THE WITNESS: YES.

5 BY MR. LAFAYETTE:

6 Q. WHAT DID HE SAY?

7 A. HE SAID HE DISCUSSED IT WITH THE STL, AND IT WILL NOT BE
8 TOLERATED, AND ASKED THEM TO TALK TO THEIR TEAMS.

9 Q. ALL RIGHT.

10 NOW, AT THE TIME THAT YOU ARE DOING THIS WORK WITH
11 MR. PEREZ, WERE YOU DOING ANYTHING RELATIVE TO THE FINAL
12 RECOMMENDATIONS OF THE 22 PROBATIONARY EMPLOYEES?

13 MS. NUGENT: BEYOND THE SCOPE.

14 MR. LAFAYETTE: I DON'T THINK SO. SHE ASKED WHEN THE
15 DECISION WAS MADE TO TERMINATE.

16 THE COURT: SUSTAINED. YOU CAN DO IT IN YOUR CASE.

17 MR. LAFAYETTE: OKAY.

18 THE CLERK: YOU KEEP MOVING SO I'M ADJUSTING THE MIC.

19 MR. LAFAYETTE: I'M TRYING TO GET OVER TO THE
20 DOCUMENTS AS WELL.

21 BY MR. LAFAYETTE:

22 Q. I WOULD LIKE YOU TO TAKE A LOOK AT EXHIBIT 599.

23 IS THIS A DOCUMENT STARTING AT THE EMAIL THAT'S DATED
24 SEPTEMBER 21, 2016 AT 1:52 P.M.

25 WHO PREPARED THAT?

1 **A.** I DID.

2 **Q.** WHAT IS THAT?

3 **A.** IT IS A RECOMMENDATION AROUND A COUPLE OF THE PROBATIONARY
4 PERIOD EMPLOYEES.

5 **Q.** NOW YOU WERE ASKED A LITTLE WHILE AGO WHEN WAS THE DATE
6 THAT THE DECISION WAS MADE TO TERMINATE MS. NEWTON.

7 DO YOU REMEMBER THIS?

8 **A.** YES.

9 **Q.** OKAY. SO ON SEPTEMBER 21, 2016, DID YOU MAKE A
10 RECOMMENDATION REGARDING MS. NEWTON?

11 **A.** YES.

12 **Q.** AND THE BASIS FOR YOUR RECOMMENDATION, WHERE IS THAT
13 STATED?

14 **A.** YOU MEAN STATED? IT'S BELOW.

15 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS DOCUMENT
16 INTO EVIDENCE, YOUR HONOR.

17 **MS. NUGENT:** NO OBJECTION.

18 **THE COURT:** ADMITTED.

19 (DEFENDANT'S EXHIBIT 599 RECEIVED IN EVIDENCE)

20 (DISPLAYED ON SCREEN.)

21 **BY MR. LAFAYETTE:**

22 **Q.** NOW, AT THE TOP OF THE PAGE IS SOMETHING FROM SOMEONE
23 NAMED LORI MARTINELLI.

24 DO YOU SEE THAT?

25 **A.** YES.

1 Q. WHO IS SHE?

2 A. SHE WAS MY SUPERVISOR AT THE TIME.

3 Q. AND IS SHE -- WHAT IS SHE ADVISING YOU OF?

4 A. THAT THE RECOMMENDATION FOR TERMINATION WAS APPROVED OR
5 SUPPORTED.

6 Q. SO NOW THE REST OF THIS DOCUMENT, DOES IT DESCRIBE YOUR
7 REASONING?

8 A. YES.

9 Q. ARE THESE SOME OF THE REASONS WHY YOU RECOMMENDED
10 TERMINATION?

11 I'M CALLING OUT WHERE IT SAYS, CIARA NEWTON RECOMMENDED
12 TERMINATION, ATTENDANCE, SIX TARDIES.

13 WAS THAT PART OF YOUR RECOMMENDATION?

14 A. YES.

15 Q. THEN IT SAYS, PERFORMANCE, SOME EXAMPLES, NOT ALL, AND
16 THEN IT SAYS BAKER TANK VALVE.

17 IS THAT PART OF YOUR RECOMMENDATION?

18 A. YES.

19 Q. THIS IS THE SECOND PAGE OF THE DOCUMENT. THIS IS CALLING
20 OUT THE REMAINDER OF YOUR RECOMMENDATION.

21 A. YES.

22 Q. NOW, ONE OF THOSE IS SOMETHING THAT'S REFERRED TO AS A HOT
23 WORK PERMIT.

24 DO YOU SEE THAT?

25 A. YES.

1 Q. WHERE DID YOU GET THAT INFORMATION FROM?

2 A. FROM ERIC PEREZ.

3 Q. THE INFORMATION THAT YOU HAVE HERE THAT YOU ARE RELYING
4 UPON, WHERE ALL DID IT COME FROM?

5 A. FROM DISCUSSIONS WITH ERIC.

6 Q. OKAY. AND AT THE TIME THAT YOU RECEIVED IT FROM ERIC, DID
7 YOU HAVE ANYTHING THAT INDICATED THAT WHAT MR. PEREZ WAS
8 TELLING YOU WAS UNTRUTHFUL?

9 A. NO.

10 Q. WITH REGARD TO THE TARDIES, FOR EXAMPLE, HAD MS. NEWTON
11 EVER SHOWN YOU ANYTHING THAT INDICATED THAT THE DISCUSSION OF
12 THE TARDIES WAS UNTRUTHFUL?

13 MS. NUGENT: LEADING.

14 THE COURT: SUSTAINED.

15 BY MR. LAFAYETTE:

16 Q. THERE'S A DISCUSSION HERE ABOUT BEHAVIORS.
17 DID YOU WRITE THAT?

18 A. YES.

19 Q. THE INFORMATION THAT YOU RECEIVED HERE CONCERNING
20 MS. NEWTON, DID YOU RECEIVE ANY INFORMATION SUCH AS THIS ON
21 HER THREE PEOPLE WHO WENT WITH HER TO OPCEN?

22 MS. NUGENT: LEADING.

23 THE COURT: SUSTAINED.

24 BY MR. LAFAYETTE:

25 Q. BASED UPON THE INFORMATION THAT YOU RECEIVED, DID YOU

1 INDEPENDENTLY FORMULATE A RECOMMENDATION?

2 **A.** YES.

3 **Q.** AND WHAT WAS YOUR INDEPENDENT RECOMMENDATION BASED UPON
4 THE INFORMATION YOU RECEIVED?

5 **A.** FOR TERMINATION.

6 **Q.** DID YOU DO THAT BECAUSE OF HER GENDER?

7 **MS. NUGENT:** LEADING.

8 **THE COURT:** OVERRULED.

9 **THE WITNESS:** NO.

10 **BY MR. LAFAYETTE:**

11 **Q.** DID YOU DO IT BECAUSE OF SOMETHING RELATING TO AN ACID
12 SPILL?

13 **MS. NUGENT:** LEADING.

14 **THE COURT:** SUSTAINED.

15 **BY MR. LAFAYETTE:**

16 **Q.** DID THE ACID SPILL COME INTO YOUR RECOMMENDATION AT ALL?

17 **A.** NO.

18 **Q.** DID YOU DO IT BECAUSE SHE PRESENTED THE STICKER?

19 **MS. NUGENT:** LEADING.

20 **THE COURT:** SUSTAINED.

21 **BY MR. LAFAYETTE:**

22 **Q.** DID THE STICKER, THE FACT THAT SHE HAD -- WHAT, IF
23 ANYTHING, DID HER PRESENTING THE STICKER HAVE TO DO WITH YOUR
24 RECOMMENDATION?

25 **A.** NONE.

1 Q. THE ISSUES THAT RELATE TO HER -- YOUR RECOMMENDATION, DID
2 YOU BECOME AWARE OF THEM BEFORE THE STICKER?

3 A. YES.

4 Q. THIS ONE, THE HOT WORK PERMIT, DO YOU KNOW WHEN THE HOT
5 WORK PERMIT ISSUE ACTUALLY AROSE?

6 A. I DON'T RECALL.

7 Q. DO YOU RECALL IF THE HOT WORK PERMIT WAS DISCUSSED DURING
8 THE AUGUST 2 MEETING WITH MS. NEWTON?

9 AND IF YOU NEED TO LOOK AT YOUR NOTES AND SEE.

10 MS. NUGENT: OBJECTION.

11 THE COURT: WHAT IS THE OBJECTION?

12 MS. NUGENT: SHE HASN'T SAID SHE HASN'T RECALLED YET.

13 THE COURT: AS TO THE FORM, IT'S SUSTAINED. BUT SHE
14 KNOWS THAT THEY ARE THERE.

15 ALL RIGHT. DO YOU KNOW, YES OR NO?

16 THE WITNESS: WAS IT DISCUSSED ON AUGUST 2ND? NO.

17 BY MR. LAFAYETTE:

18 Q. OKAY.

19 SO DO YOU KNOW IF THIS WAS SOMETHING THAT OCCURRED AFTER
20 THE AUGUST 2 MEETING?

21 A. IT MUST HAVE. IT WASN'T DISCUSSED ON AUGUST 2ND.

22 MR. LAFAYETTE: YOUR HONOR, I'LL RESERVE THE REST OF
23 MY -- FOR MY CASE-IN-CHIEF.

24 THE COURT: ALL RIGHT. RE-EXAM.

25

REDIRECT EXAMINATION

BY MS. NUGENT:

Q. I'M NOT GOING TO GO THROUGH ALL OF THE EXHIBITS THAT YOU JUST WENT THROUGH WITH MR. LAFAYETTE, BUT I DO JUST WANT TO LOOK AT A COUPLE OF THEM.

HE SHOWED YOU EXHIBIT 566. IF YOU WILL FIND THAT ONE.

A. OKAY.

Q. AND HE ASKED YOU IF YOU REVIEWED THAT EMAIL TODAY, RIGHT? HE ASKED YOU THAT, AND YOU SAID YES, RIGHT?

A. YES.

Q. YOU TALKED ABOUT THAT EMAIL IN YOUR DEPOSITION, DIDN'T YOU?

A. I MAY HAVE.

Q. OKAY. LET'S TAKE A LOOK AT IT.

YOUR DEPOSITION SHOULD BE IN YOUR WITNESS BINDER IN THE BACK.

A. THIS ONE (INDICATING).

Q. YES, IN THAT ONE.

THE LAST TAB SHOULD START WITH YOUR DEPOSITION.

A. OKAY.

Q. IF YOU WILL TURN TO PAGE 159.

A. OKAY.

Q. OKAY.

SO WHAT YOU JUST LOOKED AT WITH MR. LAFAYETTE FOR EXHIBIT 566 WAS AN EMAIL FROM ERIC PEREZ TO YOU JULY 28 AT

1 10:48 A.M., RIGHT?

2 **A.** YES.

3 **Q.** YOU WILL SEE ON PAGE 159 OF YOUR DEPOSITION, YOU WERE
4 ASKED ABOUT THAT SAME EXHIBIT. IT HAD A DIFFERENT NUMBER, BUT
5 IT IS THE EMAIL FROM ERIC PEREZ TO YOU JULY 26, 10:48.

6 ISN'T IT TRUE AT THAT TIME YOU WERE ASKED IF YOU RECALL
7 RECEIVING THAT EMAIL, AND YOU SAID I DON'T REMEMBER?

8 **A.** YES.

9 **Q.** YOU WERE ASKED WHETHER YOU REVIEWED THAT, AND YOU SAID I
10 DON'T REMEMBER; ISN'T THAT TRUE?

11 **A.** YES.

12 **Q.** LET'S JUST TAKE A LOOK AT ONE MORE.

13 MR. LAFAYETTE ASKED YOU ABOUT EXHIBIT 573. AND THAT WAS
14 AN EMAIL FROM MR. PEREZ TO YOU CC'G MIKE BECK ON AUGUST 1ST,
15 2016?

16 **A.** YES.

17 **Q.** IF YOU WILL TURN TO PAGE 161 OF YOUR DEPOSITION
18 TRANSCRIPT. YOU WERE ASKED ABOUT THAT DOCUMENT AS WELL.

19 AND ISN'T IT TRUE THAT THEN YOU DIDN'T RECALL EVER SEEING
20 THAT EMAIL?

21 **MR. LAFAYETTE:** OBJECTION, MISSTATES THE TESTIMONY.

22 **THE COURT:** OVERRULED.

23 **THE WITNESS:** I'M SORRY, THE QUESTION AGAIN?

24 **BY MS. NUGENT:**

25 **Q.** YOU NEVER RECALLED RECEIVING THAT EMAIL, DID YOU, NOT

1 UNTIL TODAY?

2 **A.** I DID NOT AT THE DEPOSITION. IT SAYS NO.

3 **Q.** YOU WERE LOOKING AT IT WHEN YOU SAID NO AT THE DEPOSITION,
4 TOO, WEREN'T YOU?

5 **A.** YES.

6 **Q.** ALL RIGHT.

7 ISN'T IT TRUE THAT YOU DON'T KNOW WHAT THE PURPOSE OF THAT
8 AUGUST 2ND MEETING WAS?

9 **A.** NO.

10 **MS. NUGENT:** YOUR HONOR, I WOULD LIKE TO PLAY A CLIP
11 FROM THE WITNESS'S DEPOSITION. PAGE 62, LINE 15 THROUGH 20.

12 **THE COURT:** GO AHEAD.

13 (PAUSE IN THE PROCEEDINGS.)

14 **THE COURT:** YOU MAY.

15 (PAUSE IN THE PROCEEDINGS.)

16 **THE COURT:** THE OBJECTION IS NOTED OR OVERRULED.

17 **MR. LAFAYETTE:** YES, YOUR HONOR. IT'S UNSPECIFIC.

18 **THE COURT:** OVERRULED.

19 **MS. NUGENT:** IT DOESN'T LOOK LIKE WE WILL BE ABLE TO
20 GET IT UP SO I'LL READ THE TESTIMONY.

21 "QUESTION: OKAY. SO AT THE FIRST MEETING THAT YOU
22 HAD WITH CIARA, WHAT WAS THE PURPOSE OF THAT MEETING?

23 "ANSWER: I DIDN'T CALL THE MEETING SO I DON'T KNOW
24 THE PURPOSE OF WHO CALLED THE MEETING.

25 "IT WAS ERIC PEREZ WHO CALLED IT, RIGHT?"

1 **MR. LAFAYETTE:** YOUR HONOR, I THINK FOR COMPLETENESS
2 IT NEEDS TO GO FURTHER.

3 **MS. NUGENT:** I'D BE HAPPY TO READ FURTHER.

4 **THE COURT:** GO AHEAD.

5 **MS. NUGENT:** UNTIL 63:8. OKAY.

6 "DO YOU KNOW WHO CALLED THE MEETING?

7 "ANSWER: I BELIEVE IT WAS ERIC PEREZ.

8 "DO YOU KNOW WHY YOU WERE ASKED TO BE THERE -- OR
9 STRIKE THAT. WHO ASKED YOU TO BE THERE?

10 "ANSWER: I DON'T RECALL, BUT I WOULD SUSPECT IT WAS
11 ERIC PEREZ.

12 "QUESTION: DID HE TELL YOU WHY?

13 "ANSWER: I DON'T REMEMBER.

14 "QUESTION: DID YOU HAVE AN UNDERSTANDING AS TO WHY
15 YOU WERE SUPPOSED TO -- WHY YOU WERE BEING ASKED TO
16 BE THERE?

17 "ANSWER: I DON'T REMEMBER."

18 **MS. NUGENT:** I HAVE NOTHING FURTHER.

19 **THE COURT:** ANYTHING ON THOSE THREE QUESTIONS OR
20 THOSE THREE SETS OF QUESTIONS?

21 **MR. LAFAYETTE:** YES, YOUR HONOR.

22 **RECROSS-EXAMINATION**

23 **BY MR. LAFAYETTE:**

24 **Q.** THE DOCUMENTS THAT SHE REFERRED TO YOU, HAVE YOU SEEN
25 THEM?

1 **A.** YES.

2 **Q.** WERE THEY SENT TO YOU?

3 **A.** YES.

4 **Q.** IS THERE ANY DOUBT IN YOUR MIND THAT THEY WERE SENT TO
5 YOU?

6 **A.** NO.

7 **Q.** AT YOUR DEPOSITION, DID YOU REMEMBER THAT THEY WERE SENT
8 TO YOU?

9 **A.** NO.

10 **Q.** WERE YOU ASKED IF YOU DENIED RECEIVING THEM?

11 **A.** NO.

12 **MS. NUGENT:** OBJECTION, LEADING.

13 **THE COURT:** SUSTAINED.

14 **BY MR. LAFAYETTE:**

15 **Q.** AT ANY POINT IN TIME DID ANY --

16 **THE COURT:** THE ANSWER IS STRICKEN.

17 **MR. LAFAYETTE:** OKAY.

18 **BY MR. LAFAYETTE:**

19 **Q.** DID YOU EVER DENY RECEIVING THEM, THE EMAILS?

20 **A.** NO.

21 **MR. LAFAYETTE:** NO FURTHER QUESTIONS.

22 **THE COURT:** ANYTHING ON THOSE QUESTIONS?

23 **MS. NUGENT:** NO. THANK YOU, YOUR HONOR.

24 **THE COURT:** ALL RIGHT. YOU MAY STEP DOWN.

25 NEXT WITNESS.

1 **MS. SMALLETS:** PLAINTIFF CALLS CIARA NEWTON.

2 **(CIARA NEWTON, CALLED AS A WITNESS FOR THE PLAINTIFF,**
3 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:)**

4 **THE WITNESS:** I DO.

5 **THE CLERK:** PLEASE BE SEATED. SCOOT OR PULL THE
6 MICROPHONE UP. THERE YOU GO.

7 PLEASE STATE YOUR FULL NAME AND SPELL YOUR LAST NAME.

8 **THE WITNESS:** MY NAME IS CIARA NEWTON, C-I-A-R-A.
9 LAST NAME, NEWTON, N-E-W-T-O-N.

10 **THE COURT:** GOOD AFTERNOON.

11 **THE WITNESS:** GOOD AFTERNOON.

12 **THE COURT:** YOU MAY PROCEED.

13 **MS. SMALLETS:** MAY I APPROACH?

14 **THE COURT:** YOU MAY.

15 (EXHIBIT BINDER HANDED TO WITNESS.)

16 **DIRECT EXAMINATION**

17 **BY MS. SMALLETS:**

18 **Q.** GOOD AFTERNOON, MS. NEWTON.

19 **A.** GOOD AFTERNOON.

20 **Q.** I WOULD LIKE TO START TODAY BY HAVING YOU TELL THE JURY A
21 LITTLE BIT ABOUT YOUR BACKGROUND.

22 WHERE DID YOU GROW UP?

23 **A.** I'M FROM PINOLE, SAN PABLO. GREW UP IN THE BAY AREA.

24 **THE COURT:** OKAY. MS. NEWTON, CLOSER TO THE MIC,
25 PLEASE. IT'S OKAY, I'M SORRY. WE CAN ALSO INCREASE THE

1 VOLUME.

2 **THE CLERK:** I HAVE IT UP.

3 **THE COURT:** LET'S TRY THAT.

4 **BY MS. SMALLETS:**

5 **Q.** WHAT DID YOUR PARENTS DO?

6 **A.** MY FATHER WAS AN IRON WORKER AND A PIPEFITTER, AND MY
7 MOTHER WORKED AT TARGET.

8 **Q.** DO YOU HAVE ANY SIBLINGS?

9 **A.** I HAVE AN OLDER BROTHER AND YOUNGER SISTER.

10 **Q.** WHAT WAS YOUR FIRST JOB?

11 **A.** I STARTED WORKING AT A PIZZA PLACE WHEN I WAS 15 IN HIGH
12 SCHOOL.

13 **Q.** WHERE DID YOU GO TO HIGH SCHOOL?

14 **A.** PINOLE VALLEY HIGH SCHOOL.

15 **Q.** WHEN DID YOU GRADUATE?

16 **A.** I GRADUATED IN 2004.

17 **Q.** AT THAT TIME DID YOU HAVE ANY INTEREST IN WORKING IN THE
18 TRADES?

19 **A.** I ALWAYS LOOKED UP TO MY DAD AND WANTED TO WORK IN A
20 SIMILAR FIELD THAT HE DID. I LIKE BEING OUTSIDE WORKING WITH
21 MY HANDS.

22 SO I ALWAYS INQUIRED WITH HIM ABOUT ONE DAY WORKING THERE
23 MAYBE WITH ME OR JUST IN THE FIELD.

24 **Q.** WHAT DID YOUR DAD SAY?

25 **A.** WELL, AS I WAS GETTING CLOSER TO GRADUATING, HE KIND OF

1 TOLD ME THAT MAYBE I SHOULD TRY SOMETHING ELSE FIRST BECAUSE
2 HE KNEW I COULD DO IT, BUT HE DIDN'T WANT TO SEE ME IN THIS
3 ENVIRONMENT. HE SAID IT'S KIND OF LIKE ROUGH ENVIRONMENT, AND
4 MAYBE I SHOULD TRY SOMETHING ELSE FIRST.

5 Q. WHAT DID YOU END UP DOING?

6 A. I WENT TO DENTAL ASSISTING SCHOOL AND BECAME A DENTAL
7 ASSISTANT.

8 Q. WHERE WAS THAT SCHOOL?

9 A. IN MARIN.

10 Q. WHEN DID YOU GRADUATE?

11 A. 2005.

12 Q. DID YOU GET A JOB AS A DENTAL ASSISTANT?

13 A. YES.

14 Q. HOW MUCH DID YOU EARN AS A DENTAL ASSISTANT?

15 A. WE STARTED AT \$18 AN HOUR.

16 Q. AND HOW LONG DID YOU WORK AS A DENTAL ASSISTANT FOR?

17 A. OVER SIX YEARS.

18 Q. DID YOU LIKE IT?

19 A. I DID IT LIKE IT, BUT I WANTED SOMETHING MORE CHALLENGING
20 AND WITH MORE ROOM FOR GROWTH.

21 Q. DID YOU FIND THAT?

22 A. EVENTUALLY I HEARD ABOUT THE ROP PROGRAM. AND IT SOUNDED
23 REALLY TOO GOOD TO BE TRUE AT FIRST BECAUSE IT'S A FREE
24 PROGRAM AND THEN YOU GET THIS REALLY GOOD JOB.

25 SO I LOOKED INTO THAT AND APPLIED TO START THAT ROP

1 PROGRAM.

2 Q. DID YOU TALK TO ANYONE IN YOUR FAMILY ABOUT WHETHER TO
3 ATTEND THE PROGRAM?

4 A. NO.

5 Q. AND WHAT IS THE ROP PROGRAM?

6 A. THE ROP PROGRAM IS A PROGRAM FOR PEOPLE WHO WANT TO WORK
7 IN THE REFINERY EITHER AS MACHINISTS OR PROCESS OPERATORS.

8 Q. DID YOU LEARN ABOUT SAFETY?

9 A. YEAH, IT WAS MOSTLY FOCUSED ON SAFETY.

10 Q. WHAT WAS THE MAIN THING YOU LEARNED ABOUT SAFETY?

11 A. THE MAIN THING I LEARNED ABOUT SAFETY IS THAT IT'S
12 IMPORTANT TO FOLLOW ALL THE PROCEDURES AND TO ASK QUESTIONS
13 AND TO NOT BE COMPLACENT.

14 SO IF YOU SEE SOMETHING THAT'S NOT WORKING, TO BRING IT
15 UP, RAISE AWARENESS ABOUT THOSE THINGS THAT YOU THINK ARE NOT
16 SAFE.

17 Q. DURING YOUR TIME IN THE ROP PROGRAM, DID YOU TALK TO ANY
18 WOMEN WHO WORK IN THE REFINERY?

19 A. I TALKED TO ONE WOMAN. SHE CAME IN --

20 MR. LAFAYETTE: OBJECTION, HEARSAY.

21 THE COURT: FOR WHAT PURPOSE IS IT BEING OFFERED?

22 MS. SMALLETS: HER STATE OF MIND.

23 THE COURT: I'LL ALLOW IT.

24 THE WITNESS: ONE WOMAN CAME IN TO TALK TO US --

25 MR. LAFAYETTE: RELEVANCE WITH REGARD TO HER STATE OF

1 MIND.

2 **THE COURT:** OVERRULED. I'M GOING TO GIVE HER A
3 LITTLE BIT OF FLEXIBILITY HERE.

4 **THE WITNESS:** BASICALLY SHE JUST HAD A REALLY
5 SUCCESSFUL CAREER AT CHEVRON. AND SHE WAS A SINGLE MOM AND
6 PROVIDED FOR HER SON WHO SHE PUT THROUGH CAL, AND SHE OVERALL
7 HAD A GOOD EXPERIENCE.

8 SO IT WAS REALLY EXCITING TO SEE HOW WELL SHE DID. SHE
9 WORKED HER WAY UP IN THE COMPANY. AND AT THE END, SHE KIND OF
10 TOOK US TWO FEMALES TO THE SIDE AND TOLD US THAT IT'S A LITTLE
11 ROUGH ENVIRONMENT, BUT IT IS POSSIBLE TO JUST DO FINE AS LONG
12 AS YOU DEMAND RESPECT, I THINK SHE SAID.

13 **THE COURT:** ALL RIGHT. SO JUST FURTHER INSTRUCTION.

14 WE DON'T KNOW IF ANY OF WHAT SHE JUST SAID IS TRUE ABOUT
15 THAT OTHER PERSON'S EXPERIENCE. RIGHT? WE DON'T HAVE THAT
16 OTHER PERSON HERE. BUT I ALLOWED IT IN SO THAT YOU COULD
17 UNDERSTAND WHAT SHE WAS THINKING AT THE TIME WHEN SHE WAS
18 THINKING ABOUT THAT JOB. THAT'S THE ONLY PURPOSE FOR WHICH
19 YOU CAN CONSIDER IT.

20 PROCEED.

21 **BY MS. SMALLETS:**

22 **Q.** NOW I WOULD LIKE TO TURN TO YOUR APPLICATION TO WORK AT
23 SHELL.

24 AT SOME POINT DID YOU LEARN THAT SHELL WAS HIRING?

25 **A.** YEAH. ABOUT THE MIDDLE OF THE ROP PROGRAM, THE CHEVRON

1 INSTRUCTOR, MIKE, WHO WAS HERE EARLIER, HE TOLD US THAT SHELL
2 WAS HIRING AND WE SHOULD APPLY. IT WOULD BE A GOOD
3 OPPORTUNITY FOR US TO PRACTICE INTERVIEWING AND PRACTICE THE
4 MECHANICAL APTITUDE TEST.

5 Q. DID YOU APPLY?

6 A. I THINK WE -- HE ASSIGNED US TO APPLY, ALL OF US, AND I
7 DID APPLY.

8 Q. CAN YOU DESCRIBE THE APPLICATION PROCESS FOR US?

9 A. IT WAS AN ONLINE APPLICATION. AND THEN AFTER THAT SOME OF
10 US GOT INVITED TO TAKE THE MECHANICAL APTITUDE TEST. AND THEN
11 AFTER THAT WE GOT INVITED TO INTERVIEW.

12 Q. WERE YOU EVER -- WERE YOU OFFERED A POSITION AT SHELL.

13 A. YEAH.

14 Q. HOW DID THAT MAKE YOU FEEL?

15 A. I FELT REALLY LUCKY AND I FELT KIND OF PROUD BECAUSE I WAS
16 EXCITED ABOUT THE OPPORTUNITY.

17 Q. DID YOU TELL YOUR DAD?

18 A. YES.

19 Q. WHAT DID HE SAY?

20 A. HE WAS -- I WAS LIKE REALLY EXCITED. I WAS LIKE, YOU
21 DON'T SEEM AS EXCITED. HE SAID, OH, IT'S NOT THAT, IT'S JUST
22 THAT I'M NOT SURPRISED. I THINK THAT'S WHAT HE SAID.

23 Q. WHEN YOU WERE OFFERED THE JOB BY SHELL, DID YOU FINISH THE
24 ROP PROGRAM?

25 A. I CONTINUED THE ROP PROGRAM UNTIL ABOUT THE LAST MONTH

1 WHEN THEY WERE JUST DOING MOCK INTERVIEWS. AND EVENTUALLY
2 MIKE TOLD ME, MAYBE SINCE I ALREADY HAVE THIS JOB, AND NOW WE
3 ARE PRACTICING INTERVIEWS, THAT IT DIDN'T MAKE SENSE TO
4 CONTINUE.

5 Q. WHEN DID YOU BEGIN WORKING AT SHELL?

6 A. JANUARY, 2015.

7 Q. I'M SORRY, WHAT WAS THE YEAR?

8 A. JANUARY 2016. SORRY.

9 Q. DID YOUR JOB BEGIN WITH AN ORIENTATION PERIOD?

10 A. YES. WE HAD ABOUT A MONTH OR TWO IN A CLASSROOM STUDYING.

11 Q. WHAT DID YOU LEARN ABOUT YOUR INITIAL TRAINING?

12 A. JUST AN ORIENTATION, THE HISTORY OF SHELL. ALL THEIR
13 POLICIES AND WHAT THEY EXPECT OF THEIR WORKERS.

14 Q. WERE YOU PART OF A CLASS OF NEW HIRES?

15 A. YES, 22 NEW HIRES.

16 Q. HOW MANY OF THEM WERE WOMEN?

17 A. FOUR.

18 Q. AS PART OF YOUR INITIAL TRAINING, DID YOU GO TO TEXAS FOR
19 FIRE SAFETY TRAINING?

20 A. YES.

21 Q. AND DO YOU RECALL HOW MANY PEOPLE ATTENDED THAT TRAINING?

22 A. IT WAS A LOT OF PEOPLE. OVER A HUNDRED PEOPLE.

23 Q. HOW MANY WOMEN WERE THERE?

24 A. MAYBE SIX. SIX.

25 Q. DID YOU RECEIVE ANY PROGRESS REVIEWS DURING YOUR INITIAL

1 TRAINING PERIOD?

2 A. YES.

3 Q. I WOULD LIKE YOU TO TAKE A LOOK IN YOUR WITNESS BINDER AT
4 EXHIBIT 3.

5 THE CLERK: CAN YOU SAY EXHIBIT?

6 MS. SMALLETS: 3.

7 BY MS. SMALLETS:

8 Q. DO YOU RECOGNIZE THIS DOCUMENT?

9 A. YES.

10 Q. TELL ME WHAT THIS IS.

11 A. PROGRESS REVIEW FROM JEFF ANDRE, OUR INITIAL TRAINER.

12 Q. WHAT WAS MR. -- I AM SORRY.

13 MS. SMALLETS: YOUR HONOR, WE MOVE THAT EXHIBIT 3 BE
14 MOVED INTO EVIDENCE.

15 MR. LAFAYETTE: NO OBJECTION.

16 THE COURT: 3 IS ADMITTED.

17 (PLAINTIFF'S EXHIBIT 3 RECEIVED IN EVIDENCE)

18 (DISPLAYED ON SCREEN.)

19 BY MS. SMALLETS:

20 Q. DID YOU DISCUSS THIS PROGRESS REVIEW WITH MR. ANDRE?

21 A. YES.

22 Q. WHAT DID HE TELL YOU?

23 MR. LAFAYETTE: OBJECTION, HEARSAY.

24 THE WITNESS: HE TOLD ME --

25 THE COURT: HOLD ON.

1 **MS. SMALLETS:** IT'S A SHELL MANAGEMENT EMPLOYEE
2 STATEMENT. IT'S WHAT DID HE TELL HER.

3 **THE COURT:** IS HE HER SUPERVISOR?

4 **MR. LAFAYETTE:** NO, TRAINER.

5 **MS. SMALLETS:** HE WAS A TRAINER.

6 **THE WITNESS:** HE WAS OUR INITIAL SUPERVISOR FOR THE
7 FIRST TWO MONTHS. WE DIDN'T HAVE A SUPERVISOR. HE WAS IN
8 CHARGE OF US.

9 **THE COURT:** ALL RIGHT. OVERRULED.

10 **BY MS. SMALLETS:**

11 **Q.** WHAT DID MR. ANDRE TELL YOU ABOUT YOUR PROGRESS DURING
12 THAT MEETING?

13 **A.** HE SAID IT WAS GOOD. HE SAID I WAS A LITTLE QUIET, BUT
14 OTHER THAN THAT EVERYTHING WAS GOOD.

15 **Q.** DID JEFF FISCHER GIVE YOU ANY TEST DURING THIS INITIAL
16 TRAINING PERIOD?

17 **A.** YES. THIS WAS A HANDS-ON TEST. MY FIRST ENCOUNTER, ONE
18 OF MY FIRST ENCOUNTERS WITH JEFF FISCHER.

19 **Q.** CAN YOU TELL ME WHAT HAPPENED THAT DAY?

20 **A.** WE WERE TAKING A CASUAL HANDS-ON TEST. IT WAS TWO
21 INSTRUCTORS AND A GROUP OF US 22 STUDENTS WAITING TO TEST ONE
22 BY ONE. AND THEN WE WERE ALL WATCHING EACH OTHER TEST.

23 IT WAS VERY CASUAL FOR EVERYONE. PEOPLE ASK QUESTIONS AND
24 SOMETIMES THE INSTRUCTORS SHOWED THEM AS THEY TESTED. BUT I
25 WAS THE LAST ONE TO TEST, SO EVERYONE HAD ALREADY WENT HOME

1 WHEN I STARTED MY TEST. AND IT WAS JUST ME AND JEFF FISCHER.

2 BEFORE I EVEN REALLY GOT TO MOVE FORWARD ON MY TEST, HE
3 SAID, I DON'T HAVE TIME FOR THIS. YOU -- YOU DIDN'T PASS THE
4 TEST. WE WILL HAVE TO DO THIS -- YOU'LL HAVE TO DO THIS AGAIN
5 TOMORROW.

6 I ASKED WHAT I DID WRONG. I STILL DON'T KNOW. AND HE
7 SAID IT WAS JUST GETTING LATE, WE NEED TO GO. WE CAN TRY THIS
8 AGAIN TOMORROW.

9 Q. DID MR. FISCHER TRAIN YOU ON WHAT MISTAKE HE CLAIMED YOU
10 MADE DURING THAT CONVERSATION?

11 MR. LAFAYETTE: OBJECTION, LEADING.

12 THE COURT: SUSTAINED.

13 BY MS. SMALLETS:

14 Q. DID MR. FISCHER OFFER YOU ANY ADDITIONAL INFORMATION ABOUT
15 THE TEST ONCE HE TOLD YOU YOU HAD MADE A MISTAKE?

16 MR. LAFAYETTE: OBJECTION, LEADING.

17 THE COURT: AS TO THE FORM, SUSTAINED.

18 OPEN-ENDED QUESTIONS ONLY.

19 BY MS. SMALLETS:

20 Q. DID YOU AND MR. FISCHER DISCUSS WHAT -- YOUR MISTAKE AT
21 ALL, THE SUBSTANCE OF IT?

22 A. NO. SO AFTER THAT HE --

23 MR. LAFAYETTE: OBJECTION, BEYOND THE SCOPE AFTER THE
24 ANSWER NO.

25 THE COURT: OVERRULED.

1 **THE WITNESS:** HE DIDN'T EXPLAIN TO ME WHAT THE
2 MISTAKE WAS. WE DROVE IN HIS CAR, AND I WENT BACK AND TOLD MY
3 INSTRUCTOR I DIDN'T PASS THE TEST. I DON'T KNOW WHY.

4 **MR. LAFAYETTE:** OBJECTION, YOUR HONOR, IT BECOMES --

5 **THE COURT:** JUST GIVE ME THE LEGAL OBJECTION. STOP
6 EXPLAINING YOUR OBJECTIONS IN VIOLATION OF MY ORDER.

7 **MR. LAFAYETTE:** UNRESPONSIVE, YOUR HONOR. BEYOND....

8 **THE COURT:** SUSTAINED AT THIS POINT.

9 KEEP IT UNDER CONTROL.

10 **BY MS. SMALLETS:**

11 **Q.** DID YOU -- DID YOU TELL JEFF ANDRE WHAT HAPPENED WITH JEFF
12 FISCHER?

13 **MR. LAFAYETTE:** OBJECTION, LEADING.

14 **THE COURT:** SUSTAINED.

15 **BY MS. SMALLETS:**

16 **Q.** DID YOU DISCUSS WITH JEFF ANDRE YOUR CONVERSATION WITH
17 JEFF FISCHER?

18 **MR. LAFAYETTE:** OBJECTION, LEADING.

19 **THE COURT:** HOW IS THAT ANY DIFFERENT? SUSTAINED.

20 **BY MS. SMALLETS:**

21 **Q.** DID YOU TELL ANYONE ABOUT YOUR CONVERSATION WITH JEFF
22 FISCHER?

23 **A.** SO I CAME BACK TO THE CLASSROOM --

24 **THE COURT:** THAT'S A YES OR NO.

25 **THE WITNESS:** DID I --

1 **THE COURT:** DID YOU TELL ANYONE ELSE?

2 **THE WITNESS:** YES, I DID.

3 **BY MS. SMALLETS:**

4 **Q.** WHO DID YOU TELL?

5 **A.** MY INSTRUCTOR JEFF ANDRE.

6 **Q.** WHAT DID YOU TELL MR. ANDRE?

7 **A.** I TOLD JEFF ANDRE I DIDN'T PASS THE TEST. I DON'T KNOW
8 WHY.

9 **Q.** WHAT DID MR. ANDRE SAY OR DO IN RESPONSE?

10 **A.** HE JUST KIND OF ROLLED HIS EYES LIKE HE THOUGHT IT WAS
11 RIDICULOUS.

12 **MR. LAFAYETTE:** OBJECTION, IMPROPER OPINION.

13 **THE COURT:** ALL RIGHT. THE ROLLED YOUR EYES --

14 **THE WITNESS:** OKAY, SORRY.

15 **THE COURT:** -- IS FINE. WHAT HE WAS THINKING SHE
16 CANNOT TESTIFY TO. THAT IS SUSTAINED. THAT PART IS STRICKEN.

17 **BY MS. SMALLETS:**

18 **Q.** DID YOU RETAKE THE TEST?

19 **A.** I RE-TOOK THE TEST THE NEXT DAY.

20 **Q.** WHO ISSUED THE TEST TO YOU THE NEXT DAY?

21 **A.** THIS TIME WITH SOMEBODY NAMED JONATHAN ALDRAGE (PHONETIC).

22 **Q.** DID YOU PASS?

23 **A.** YES.

24 **Q.** DURING THIS ORIENTATION PERIOD, WERE YOU ASKED TO CHOOSE
25 WHAT DEPARTMENT YOU WOULD LIKE TO WORK IN?

1 **A.** YES.

2 **Q.** WHAT DEPARTMENT WAS YOUR FIRST CHOICE?

3 **A.** MY FIRST CHOICE WAS LOGISTICS.

4 **Q.** WHY WAS THAT YOUR FIRST CHOICE?

5 **A.** WE GOT SHORT DESCRIPTIONS OF EACH DEPARTMENT FROM THE
6 DIFFERENT EMPLOYEES THAT WERE CURRENTLY WORKING THERE, AND ALL
7 THE EMPLOYEES WHO CAME FROM LOGISTICS WERE VERY HAPPY, AND
8 THEY HAD ALL MOVED UP AND QUALIFIED ON LOTS OF DIFFERENT JOBS
9 MUCH FASTER THAN THE OTHER UNITS.

10 SO IT SEEMED LIKE THERE WAS A LOT MORE ROOM FOR GROWTH AND
11 THEY JUST SEEMED GENERALLY HAPPIER.

12 **Q.** WAS OPCEN ONE OF YOUR CHOICES?

13 **A.** I DON'T THINK THAT IT WAS.

14 **Q.** WHY NOT?

15 **A.** NOT FOR REALLY ANY SPECIFIC REASON OTHER THAN JUST HEARING
16 A LOT OF THE GUYS THAT WORK THERE SAY, WHATEVER YOU DO, DON'T
17 COME TO OPCEN. I WAS JUST BASING MY OPINION OFF ADVICE I HAD
18 HEARD FROM CURRENT EMPLOYEES. THEY DIDN'T JUST SAY THAT TO
19 ME, THEY SAID IT TO THE CLASS.

20 **Q.** DID THE PEOPLE THAT CAME TO SPEAK TO THE CLASS ABOUT OPCEN
21 SAY ANYTHING ABOUT THE KIND OF EMPLOYEES THEY NEEDED IN OPCEN?

22 **MR. LAFAYETTE:** OBJECTION, LEADING.

23 **THE COURT:** SUSTAINED.

24 **BY MS. SMALLETS:**

25 **Q.** DID... DO YOU RECALL ANYTHING ELSE THAT THE PEOPLE WHO

1 CAME TO THE CLASS SAID ABOUT WORKING IN OPCEN?

2 **A.** THEY SAID THAT THEY COOK A LOT OF GOOD FOOD THERE, BUT
3 THAT IT WAS ONE OF THE OLDER DEPARTMENTS. AND A LOT OF THE
4 VALVES WERE HEAVIER. SO I THINK THEY JOKINGLY SAID, WE TEND
5 TO GET LIKE BURLY, BIG BURLY MEN AND POINTED OUT A COUPLE OF
6 GUYS IN THE CLASS.

7 THEY JUST MENTIONED THAT IT WAS ONE OF THE OLDER PLANTS
8 AND SOME OF THE VALVES TOOK TWO GUYS TO TURN.

9 **Q.** WHERE WERE YOU ASSIGNED TO WORK?

10 **A.** OPCEN NORTH IN THE HYDROGEN PLANT.

11 **Q.** DID YOU HAVE ANY CONCERNS WHEN YOU LEARNED ABOUT THAT
12 ASSIGNMENT?

13 **A.** NO. MY ONLY CONCERN WAS WE WERE IN THE VICINITY OF JEFF
14 FISCHER WHO WAS THE SUPERVISOR OF THAT PLANT. WHEN HE LEARNED
15 WHO WAS COMING TO HIS PLANT --

16 **MR. LAFAYETTE:** OBJECTION, IT'S BEYOND THE SCOPE.

17 **THE COURT:** I'LL LEAVE IT AT THAT. NEXT QUESTION.

18 **BY MS. SMALLETS:**

19 **Q.** WHAT DID MR. FISCHER SAY?

20 **A.** AND WE HEARD HIM SAY, WHO... WHO OF THE F DID I PISS OFF
21 TO HAVE THESE A HOLES COMING TO OPCEN.

22 SO AT THAT MOMENT --

23 **Q.** HOW DID THAT MAKE YOU FEEL?

24 **A.** MADE ME FEEL WORRIED THAT HE ALREADY WASN'T HAPPY WITH US
25 BEING IN HIS DEPARTMENT.

1 Q. DO YOU THINK THAT WAS DIRECTED AT YOU?

2 MR. LAFAYETTE: OBJECTION.

3 THE COURT: OVERRULED.

4 THE WITNESS: I WASN'T SURE, BUT I THOUGHT THAT IT
5 WAS.

6 BY MS. SMALLETS:

7 Q. DID YOU RECEIVE A 60-DAY PROGRESS REVIEW?

8 A. YES.

9 Q. DID YOU RECEIVE -- TAKE A LOOK AT EXHIBIT 4, PLEASE.

10 CAN YOU TELL ME WHAT THIS IS?

11 A. THIS WAS MY LAST REVIEW WITH JEFF ANDRE, OUR INITIAL
12 TEACHER.

13 MS. SMALLETS: YOUR HONOR, WE MOVE THAT EXHIBIT 4 BE
14 ADMITTED INTO EVIDENCE.

15 MR. LAFAYETTE: NO OBJECTION, YOUR HONOR.

16 THE COURT: IT'S ADMITTED.

17 (PLAINTIFF'S EXHIBIT 4 RECEIVED IN EVIDENCE)

18 (DISPLAYED ON SCREEN.)

19 BY MS. SMALLETS:

20 Q. DID YOU AND MR. ANDRE DISCUSS THIS REVIEW?

21 A. YES.

22 Q. WHAT DID HE TELL YOU ABOUT YOUR PROGRESS IN THE FIRST 60
23 DAYS?

24 A. THAT IT WAS WHERE IT WAS EXPECTED TO BE.

25 Q. DID YOU RECEIVE ANY ADDITIONAL TRAINING ONCE YOU WERE

1 ASSIGNED TO OPCEN?

2 **A.** ONCE WE WERE ASSIGNED TO OPCEN, WE HAD ADDITIONAL TRAINING
3 AND IT'S KIND OF A CLASSROOM SETTING WITH JEFF FISCHER.

4 **Q.** WAS MR. FISCHER TRAINING ANY NEW HIRES OTHER -- WITH YOU?

5 **A.** PATRICK NEUMAN, MENA EKELEMU, AND BILL WESSELMAN. I MEAN,
6 NOT BILL WESSELMAN. BILL WESSELMAN WAS ASSIGNED TO OPCEN
7 SOUTH. SO I WORKED WITH HIM A LOT. BUT WE WERE IN OPCEN
8 NORTH. INITIALLY OUR TRAINING WAS JOSE NAVARRO, PATRICK
9 NEUMAN, AND MENA.

10 **Q.** WERE YOU OUT IN THE UNIT DURING THAT TRAINING PERIOD WITH
11 JEFF FISCHER?

12 **A.** WE WERE MOSTLY IN THE CLASSROOM AND WE ALSO WOULD TAKE
13 TOURS AND DO SOME HANDS-ON WORK IN THE UNIT.

14 **Q.** WAS OPCEN RUNNING DURING MOST YOUR TRAINING?

15 **A.** IT WAS DOWN. IT WAS IN TURNAROUND SO THE EQUIPMENT WAS
16 ALL DOWN.

17 **Q.** WHAT WAS YOUR SCHEDULE DURING THE TIME THAT YOU TRAINED
18 WITH MR. FISCHER?

19 **A.** OUR SCHEDULE WAS A ROTATING 9/80 SCHEDULE. WELL, AT FIRST
20 IT WAS -- WE WERE KIND OF TAKING IT DAY BY DAY ACCORDING TO
21 WHAT WORKED FOR JEFF'S COMMUTE. I THINK WITHIN THE NEXT WEEK
22 WE ESTABLISHED THE 9/80 SCHEDULE, WHICH WAS MONDAY THROUGH
23 THURSDAY AND THEN ROTATING FRIDAYS OFF.

24 **Q.** HOW MANY HOURS WERE YOU WORKING MONDAY TO THURSDAY?

25 **A.** NINE.

1 Q. HOW MANY HOURS DID YOU WORK ON THE FRIDAYS YOU WERE AT
2 WORK?

3 A. EIGHT.

4 Q. DO YOU KNOW WHAT TIME YOU WERE SUPPOSED TO BE AT WORK
5 DURING THE TIME THAT YOU WERE WITH JEFF FISCHER?

6 A. IT WAS REALLY UNCLEAR. I BELIEVE IT WAS 6:00 -- IN THE
7 BEGINNING IT WAS 6:00, SOMETIMES 6:30, DEPENDING ON WHAT TIME
8 WE WERE GOING TO LEAVE. THEN EVENTUALLY WE ESTABLISHED A SET
9 TIME BECAUSE WE NEEDED TO ARRIVE EARLY ENOUGH TO BE THERE FOR
10 THE OPERATORS' MEETING. AND I BELIEVE THAT WAS 6:15, 6:00
11 A.M.

12 Q. DO YOU REMEMBER WHEN YOU STARTED TO ATTEND THE OPERATORS'
13 MEETING?

14 A. NO.

15 Q. DO YOU KNOW IF IT WAS BEFORE OR AFTER YOU TOOK YOUR FINAL
16 TEST?

17 A. BEFORE.

18 Q. I WOULD LIKE TO TALK TO YOU A LITTLE BIT ABOUT THE
19 TRAINING ENVIRONMENT DURING THE TIME YOU WORKED FOR JEFF
20 FISCHER.

21 DID MR. FISCHER ASK YOU AND YOUR FELLOW TRAINEES WHAT TEAM
22 YOU WOULD LIKE TO BE ON?

23 MR. LAFAYETTE: OBJECTION, LEADING.

24 THE COURT: OVERRULED.

25 THE WITNESS: YEAH. ONCE WE GOT THERE, WE WERE GOING

1 TO -- EVENTUALLY AFTER OUR TRAINING WITH JEFF FISCHER, HE
2 WOULD ASSIGN US TO FOUR DIFFERENT TEAMS WITH FOUR DIFFERENT
3 SCHEDULES BUT ALL OPERATING IN HP-2. SO HE WANTED TO TAKE
4 INTO CONSIDERATION WHICH SCHEDULE WE'D PREFER.

5 **BY MS. SMALLETS:**

6 **Q.** CAN YOU TELL ME, EXPLAIN TO ME THE RELATIONSHIP BETWEEN
7 YOUR TEAM AND YOUR SCHEDULE?

8 **A.** YOUR SCHEDULE JUST DETERMINES WHO YOU WORK WITH. BUT WE
9 ALL HAVE THE SAME THREE DAYS ON, TWO DAYS -- JUST DIFFERENT
10 DAYS.

11 **Q.** DID YOU EXPRESS A PREFERENCE AS TO WHAT TEAM YOU WANTED TO
12 BE ON?

13 **A.** I WANTED TO BE ON A CERTAIN TEAM. I CAN'T REMEMBER
14 WHICH -- WHAT THE TEAM NUMBER WAS ANYMORE. AND JEFF FISCHER
15 IMMEDIATELY TOLD ME I COULDN'T BE ON THAT TEAM BECAUSE THEY
16 ALREADY HAD A GIRL.

17 **Q.** DID ANYONE IN YOUR CLASS RESPOND WHEN HE SAID THAT?

18 **A.** SOMEBODY SAID WHO'S ON THAT TEAM? AND HE SAID, WELL, FOR
19 ONE, RANDY'S ON THAT TEAM AND HE'S BASICALLY A GIRL BECAUSE
20 HE... BECAUSE HE BITCHES ALL THE TIME.

21 **Q.** HOW DID THAT MAKE YOU FEEL?

22 **A.** IT MADE ME FEEL LIKE HE DIDN'T THINK -- LIKE HE THOUGHT I
23 WAS INFERIOR BECAUSE I WAS A GIRL AND THAT HE WAS PLACING ME
24 IN A SMALL BOX LIKE ASSUMING I WAS THE SAME AS -- THAT WE WERE
25 ALL THE SAME BUT WE ARE ALL DIFFERENT. AND IT MADE ME FEEL

1 LIKE I WASN'T GIVEN THE SAME CHANCE AS EVERYONE ELSE TO PICK
2 THE TEAM THAT I WANTED TO BE ON.

3 **Q.** DID MR. FISCHER MAKE ANY STATEMENTS TO YOU ABOUT SHELL'S
4 DECISION TO HIRE YOU?

5 **A.** YEAH. PRETTY QUICKLY --

6 **MR. LAFAYETTE:** OBJECTION, LEADING.

7 **THE COURT:** OVERRULED.

8 **THE WITNESS:** WITHIN MY FIRST FEW DAYS THERE, HE
9 ASKED WHO INTERVIEWED ME. AND HE SAID, I MUST HAVE PUT ON A
10 GOOD SHOW.

11 THEN HE WENT ON HIS BREAK. BECAUSE I DIDN'T REMEMBER WHO
12 INTERVIEWED ME, I DIDN'T KNOW THEIR NAME. AND HE WENT ON HIS
13 BREAK TO FIND OUT WHO IT WAS WHO --

14 **MR. LAFAYETTE:** OBJECTION, BEYOND THE SCOPE OF THE
15 QUESTION.

16 **THE COURT:** SUSTAINED. WELL, IT IS A NARRATIVE AT
17 THIS POINT.

18 SUSTAINED.

19 **BY MS. SMALLETS:**

20 **Q.** DID YOU HAVE ANY FURTHER CONVERSATION WITH MR. FISCHER
21 ABOUT THIS?

22 **A.** YEAH. HE JUST SAID, YOU KNOW, WHO WOULD HIRE YOU, AND YOU
23 MUST HAVE PUT ON A GOOD SHOW.

24 IN THAT SINCE SHELL STARTED THESE NEW POLICIES THAT THEY
25 WEREN'T GETTING THE SAME QUALITY OF OPERATORS THAT THEY USED

1 TO; THAT HAD BEEN THERE FOR LIKE OVER 20 YEARS AND THEY USED
2 TO HIRE REFERRALS. AND HE SAW THAT SOMEBODY INTERVIEWED A
3 HALF HOUR BEFORE ME --

4 **MR. LAFAYETTE:** OBJECTION, BEYOND THE SCOPE. IT IS A
5 NARRATIVE.

6 **THE COURT:** LET'S HAVE SOME STRUCTURE TO THIS,
7 MS. SMALLETS.

8 SUSTAINED.

9 OTHERWISE SHE CAN GO ON AND ON. I NEED STRUCTURE.

10 **BY MS. SMALLETS:**

11 **Q.** WHAT DID HE TELL YOU?

12 **MR. LAFAYETTE:** OBJECTION.

13 **THE COURT:** OVERRULED.

14 **THE WITNESS:** HE JUST BASICALLY TOLD ME THAT HE WAS
15 UNHAPPY THAT I WAS THERE.

16 **BY MS. SMALLETS:**

17 **Q.** DID HE --

18 **A.** THINGS WOULD HAVE BEEN DIFFERENT IF HE DID THE HIRING.

19 **Q.** DID HE DESCRIBE THE POLICIES THAT HE WAS REFERRING TO?

20 **A.** NO.

21 **Q.** AND HOW DID THAT CONVERSATION MAKE YOU FEEL?

22 **A.** IT MADE ME FEEL THAT HE DIDN'T KNOW ME YET. AND WITH A
23 LITTLE TIME, HE'S GOING TO SEE I'M A GOOD OPERATOR. AND MAYBE
24 I COULD PROVE HIM -- PROVE HIS -- LIKE PROVE HIM WRONG. IT
25 ALSO MADE ME WORRIED THAT HE HAD ALREADY PUT ME -- HAD ALREADY

1 DECIDED THAT I WASN'T GOOD ENOUGH TO BE THERE.

2 Q. DID MR. FISCHER MAKE ANY COMMENTS ABOUT WALKING EMPLOYEES
3 TO THE GATE?

4 MR. LAFAYETTE: OBJECTION, YOUR HONOR, LEADING.

5 THE COURT: SUSTAINED.

6 BY MS. SMALLETS:

7 Q. DID MR. FISCHER MAKE ANY OTHER COMMENTS THAT YOU FOUND
8 OFFENSIVE?

9 MR. LAFAYETTE: OBJECTION, OVERBROAD.

10 THE COURT: OVERRULED.

11 THE WITNESS: HE MADE A LOT OF STATEMENTS. HE
12 CONSTANTLY TALKED ABOUT WALKING ME TO THE GATE, WHICH MEANS
13 LIKE FIRING YOU.

14 AND HE CONSTANTLY TOLD THE STORY OF A FEMALE OPERATOR WHO
15 WAS WALKED TO THE GATE IN TEARS. IT WAS JUST LIKE RANDOMLY
16 WOULD TELL THAT STORY MORE THAN ONE TIME.

17 BY MS. SMALLETS:

18 Q. HOW DID THAT MAKE YOU FEEL?

19 A. I FELT LIKE HE WAS THREATENING ME.

20 Q. DID MR. FISCHER MAKE ANY COMMENTS ABOUT THE ROLE OF WOMEN
21 IN OPCEN?

22 A. HE SAID THAT WOMEN DON'T LAST LONG IN OPCEN. WOMEN DON'T
23 MAKE IT IN OPCEN.

24 Q. HOW OFTEN DID MR. FISCHER SAY THAT?

25 A. AT LEAST FIVE TIMES.

1 Q. HOW DID THAT MAKE YOU FEEL?

2 A. AGAIN, I JUST FELT THREATENED.

3 Q. DID YOU EVER TALK TO ERIC PEREZ ABOUT ANY CONCERNS THAT
4 YOU HAD ABOUT MR. FISCHER?

5 A. I DID TALK TO ERIC PEREZ PRETTY, PRETTY EARLY ON.

6 Q. DO YOU RECALL WHEN THAT TIME WAS, WHEN IT WAS?

7 A. YES.

8 Q. WHEN WAS THAT?

9 A. I BELIEVE IT WAS IN MARCH.

10 Q. WHAT DID YOU TELL MR. PEREZ?

11 A. WELL, WE HAD A MEETING BECAUSE -- BEFORE BEING HIRED I HAD
12 SOME TIME APPROVED OFF --

13 MR. LAFAYETTE: OBJECTION, NONRESPONSIVE.

14 THE WITNESS: WHAT WAS THE QUESTION?

15 BY MS. SMALLETS:

16 Q. THE QUESTION WAS WHAT DID YOU TELL MR. PEREZ?

17 A. I TOLD MR. PEREZ THAT -- ABOUT THE INCIDENT WHERE HE SAID
18 I COULDN'T BE ON THE TEAM BECAUSE I WAS A GIRL. AND --

19 Q. LET ME TAKE A STEP BACK JUST SO WE ARE CLEAR.

20 WHY DID YOU -- WHY DID YOU HAVE A MEETING WITH MR. PEREZ?

21 A. WE WERE TALKING ABOUT THE SCHEDULES.

22 Q. AND SO WHAT DID YOU TELL MR. PEREZ?

23 A. I TOLD HIM, BECAUSE I THOUGHT EVERYONE KNEW HOW JEFF
24 FISCHER WAS, SO I SAID, I KNOW YOU PROBABLY HEARD THIS BEFORE,
25 BUT JEFF FISCHER IS REALLY NOT A GOOD TRAINER.

1 AND THEN HE SAID, NO, ACTUALLY JEFF HAS BEEN HERE FOR A
2 LONG TIME. HE'S A REALLY WELL-LIKED GUY. HE ASKED ME WHY I
3 FELT THAT WAY AND I GAVE HIM SOME EXAMPLES.

4 AND AT THAT TIME ONE OF THE MAIN EXAMPLES SINCE WE WERE
5 TALKING ABOUT THE NEW SCHEDULE WAS THE FACT THAT HE DIDN'T
6 TAKE MY TEAM INTO CONSIDERATION BECAUSE HE SAID IT WAS BECAUSE
7 I WAS A GIRL.

8 **Q.** WHAT WAS MR. PEREZ'S RESPONSE WHEN YOU TOLD HIM THAT?

9 **A.** WHEN I TOLD HIM THE PART ABOUT SAYING RANDY WAS BASICALLY
10 A GIRL, HE KIND OF JUST LAUGHED. AND HE TOLD ME JUST TO GIVE
11 IT SOME TIME, THAT JEFF'S A GOOD GUY, HE HAD BEEN HERE A LONG
12 TIME.

13 **Q.** WHY DID YOU GIVE MR. PEREZ THAT SPECIFIC EXAMPLE?

14 **A.** BECAUSE WE WERE TALKING ABOUT TIME OFF THAT I REQUESTED.
15 AND I -- IF I WOULD HAVE GOTTEN THE TIME -- THE TEAM THAT I
16 HAD REQUESTED, I WOULD HAVE HAD THOSE DAYS OFF. SO WE WERE
17 TALKING ABOUT SCHEDULING. THAT WAS THE PURPOSE --

18 **MR. LAFAYETTE:** OBJECTION, BEYOND THE SCOPE --

19 **THE COURT:** OVERRULED. LET HER FINISH.

20 **BY MS. SMALLETS:**

21 **Q.** DURING THAT MEETING, DID MR. PEREZ OFFER TO HELP IN ANY
22 WAY?

23 **A.** NO.

24 **Q.** DID MR. PEREZ SAY ANYTHING TO YOU ABOUT JEFF FISCHER
25 DURING THAT MEETING?

1 **MR. LAFAYETTE:** OBJECTION, LEADING.

2 **THE WITNESS:** JUST THAT HE HAD BEEN THERE FOR A LONG
3 TIME.

4 **THE COURT:** SO IF THERE IS AN OBJECTION, YOU NEED TO
5 STOP.

6 **THE WITNESS:** OKAY.

7 **THE COURT:** OVERRULED. FINISH YOUR ANSWER.

8 **THE WITNESS:** ERIC JUST TOLD ME THAT JEFF HAD BEEN
9 THERE FOR A LONG TIME AND THAT HE WAS A REALLY WELL-LIKED GUY.

10 **BY MS. SMALLETS:**

11 **Q.** DURING THE TIME THAT YOU TRAINED UNDER JEFF FISCHER, DID
12 YOU EVER HAVE TO MISS CLASS?

13 **A.** YEAH. PRETTY EARLY AGAIN WITH JEFF FISCHER I DID.

14 **Q.** WHY DID YOU MISS CLASS?

15 **A.** I GOT A TEXT MESSAGE THAT MY DAD WAS SUDDENLY UNEXPECTEDLY
16 IN A COMA, SO I LEFT CLASS.

17 **Q.** AND WHAT HAPPENED WITH YOUR DAD?

18 **A.** HE PASSED AWAY SHORTLY AFTER.

19 **Q.** DO YOU REMEMBER THE DAY?

20 **A.** MARCH 2ND.

21 **Q.** I'M SORRY.

22 DID YOU TELL ANYONE IN SHELL WHAT HAD HAPPENED?

23 **A.** I COMMUNICATED WITH ERIC PEREZ AND JEFF FISCHER LETTING
24 THEM KNOW THAT I WOULD BE MISSING -- THAT I WOULD BE AT THE
25 HOSPITAL DURING THIS TIME.

1 Q. DO YOU KNOW HOW MANY DAYS YOU ENDED UP MISSING?

2 A. A TOTAL OF FOUR OR FIVE.

3 Q. WHEN YOU CAME BACK TO WORK, DID YOU HAVE ANY CONVERSATIONS
4 WITH JEFF FISCHER ABOUT MISSING WORK?

5 A. YEAH. HE MADE IT REALLY CLEAR TO ME THAT HE DIDN'T THINK
6 I WAS ENTITLED TO HAVE THOSE FOUR OR FIVE DAYS OFF, AND THAT
7 WHEN HIS FAMILY MEMBER, I THINK IT WAS HIS FATHER, TOO, DIED,
8 THAT HE MISSED ONE DAY OF WORK.

9 Q. DID YOU TALK WITH MR. FISCHER ABOUT HOW YOU WERE GOING TO
10 CATCH UP FOR THE TIME YOU MISSED?

11 A. THEN HE TOLD ME THAT HE DIDN'T HAVE TIME TO CATCH ME UP.
12 SO BASICALLY JUST TO START WORKING ON CATCHING UP ON MY OWN.

13 Q. DID MR. FISCHER HELP YOU CATCH UP?

14 A. NO.

15 Q. AFTER YOUR DAD DIED, WERE YOU EVER LATE FOR WORK?

16 A. YES.

17 Q. DO YOU RECALL WHEN?

18 A. I RECALL MARCH 23RD.

19 Q. WHY WERE YOU LATE THAT DAY?

20 A. IT WAS A FEW DAYS, I THINK TWO DAYS AFTER MY DAD'S
21 FUNERAL, AND I WAS CONSOLING MY MOTHER WHO I DIDN'T FEEL
22 COMFORTABLE LEAVING ALONE THAT MORNING. SO I CALLED JEFF AND
23 TOLD HIM I WAS HAVING A FAMILY EMERGENCY AND I WOULD BE THERE
24 SHORTLY.

25 Q. DID MR. FISCHER REPORT THIS TARDY ON YOUR PD LOG?

1 **A.** YES.

2 **Q.** DID MR. FISCHER WRITE YOU UP FOR BEING LATE ON ANY OTHER
3 DAY?

4 **A.** APRIL 7TH. SOMETIME IN APRIL.

5 **Q.** WERE YOU LATE ON THE DAY HE WROTE YOU UP FOR?

6 **A.** NO.

7 **Q.** DID YOU EVER TELL ERIC PEREZ THAT YOU WERE NOT LATE ON
8 THAT DAY?

9 **A.** I TOLD ERIC PEREZ THAT I DIDN'T THINK I WAS LATE THAT DAY.

10 **Q.** WHAT LED TO YOUR CONVERSATION WITH MR. PEREZ?

11 **A.** JEFF FISCHER STARTED WRITING ME UP FOR BEING TARDY THAT
12 DAY. AND I WAS CONFUSED. I DON'T WANT TO SIGN THE PAPER
13 BECAUSE I DIDN'T THINK I WAS LATE. SO I THINK JEFF CALLED
14 ERIC TO COME JOIN US TO FIGURE OUT --

15 **MR. LAFAYETTE:** OBJECTION, HEARSAY.

16 **THE WITNESS:** SO EVENTUALLY --

17 **THE COURT:** HOLD ON.

18 THE OBJECTION IS SUSTAINED AS TO THE LAST SENTENCE.

19 NEXT QUESTION.

20 **BY MS. SMALLETS:**

21 **Q.** DID YOU TALK TO MR. PEREZ ABOUT THAT TARDY?

22 **A.** YES.

23 **Q.** WHAT DID YOU TELL MR. PEREZ?

24 **A.** I SAID I DON'T THINK I'M LATE. I DON'T THINK I WAS LATE.
25 AND ALSO I FEEL LIKE THE GUYS HAVE BEEN LATE AND I'VE BEEN

1 HERE BEFORE THEM, BUT I'VE TALKED TO THEM AND THEY HAVEN'T
2 BEEN WRITTEN UP.

3 Q. DID YOU BELIEVE THE GUYS WERE LATE?

4 MR. LAFAYETTE: OBJECTION.

5 THE COURT: OVERRULED.

6 MR. LAFAYETTE: LACK OF FOUNDATION.

7 THE COURT: OVERRULED.

8 THE WITNESS: YEAH. WE STARTED IN THE CLASSROOM AND
9 I BELIEVED THAT THEY WERE LATE BECAUSE I SAW THEM ARRIVE LATER
10 THAN I DID SOMETIMES.

11 BY MS. SMALLETS:

12 Q. IS THERE A CARD READER OUTSIDE THE DOOR TO THE CLASSROOM?

13 A. NO.

14 THE COURT: YOU HAVE ONE MINUTE. IF YOU WANT TO WRAP
15 UP A LINE, THAT'S FINE.

16 MS. SMALLETS: ACTUALLY, NOW IS FINE.

17 THE COURT: ALL RIGHT.

18 OKAY. LADIES AND GENTLEMEN, LOT OF INFORMATION TODAY.
19 ANY QUESTIONS?

20 (NO RESPONSE)

21 HAVE ENOUGH SNACKS FOR TOMORROW? THE DAY AFTER? FEEL
22 FREE TO BRING THINGS IN. THERE IS THAT MICROWAVE IN THERE.

23 WHEN MY SON WAS YOUNGER, HE WOULD BAKE FOR MY JURORS BUT
24 HE'S NOW A SENIOR AND WE ARE DOING COLLEGE APPS, SO
25 UNFORTUNATELY HE'S NOT DOING ANY BAKING, BUT WE WILL SEE WHAT

1 WE CAN DO.

2 ALL RIGHT. HAVE A GREAT AFTERNOON. SEE YOU BACK HERE
3 TOMORROW MORNING 8:00 A.M. REMEMBER ALL MY DO NOTS. ALL
4 RIGHT. AND LEAVE YOUR BINDERS IN THERE. THANK YOU.

5 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

6 **THE COURT:** YOU MAY STEP DOWN.

7 LET'S DO A FEW THINGS BEFORE WE LEAVE TODAY.

8 ONE, WE NEED TO DEAL WITH THESE EXHIBITS.

9 SO AS OF YESTERDAY, IN NUMERICAL ORDER, I HAVE ADMITTED
10 THE FOLLOWING DOCUMENTS OR THE FOLLOWING EXHIBITS:

11 31, 34, 37, 41, 45, 46, 48, 50, 51, 60, 137A, AND 145.

12 I DO NOT HAVE 137A FROM THE PLAINTIFFS. I NEED IT
13 TOMORROW MORNING BY 8:00 A.M. THAT IS ONLY PAGES 5721 TO
14 5724.

15 TODAY I HAVE ADMITTED IN ORDER OF BEING ADMITTED: 19, 85,
16 97, 109, 121, 83, 21, 38, 99, 40, 86, 70A. I NEED THAT
17 DOCUMENT, 8:00 A.M. TOMORROW. 49, 546.

18 I WILL ADMIT 547, BUT MR. LAFAYETTE, YOU DID NOT REASK
19 AFTER I ASKED YOU FOR MORE FOUNDATION. I AM NOW ADMITTING IT.

20 (DEFENDANT'S EXHIBIT 547 RECEIVED IN EVIDENCE)

21 556.

22 THE FOLLOWING HAVE ISSUES WITH RESPECT TO THE GATE LOGS:
23 SO PORTIONS OF THEM HAVE BEEN ADMITTED. 558, 561, 563 AND
24 566. I WILL DESIGNATE ALL OF THOSE AS A UNLESS THERE IS SOME
25 REASON TO ADMIT THE GATE LOGS. I NEED THOSE DOCUMENTS

1 TOMORROW.

2 (DEFENDANT'S EXHIBITS 558A, 561A, 563A, 566A RECEIVED IN
3 EVIDENCE)

4 LET ME FINISH THIS PIECE.

5 573, 577, 581, 594, 595, 599, 3, AND 4.

6 IF THERE ARE ANY DISPUTES WITH RESPECT TO THE EXHIBITS
7 THAT HAVE BEEN ADMITTED THUS FAR, YOU NEED TO LET ME KNOW
8 TOMORROW MORNING.

9 ALL RIGHT. WHAT IS THE DEAL WITH THE GATE LOGS?

10 **MR. LAFAYETTE:** I DON'T UNDERSTAND THE HEARSAY
11 OBJECTION. THEY ARE THE GATE LOGS THAT HE GOT, THAT HE USED,
12 THAT HE RELIED UPON. SO THEY GO -- IT IS A BUSINESS RECORD.

13 **THE COURT:** WHY AREN'T THEY A BUSINESS RECORD?

14 **MS. NUGENT:** THE BUSINESS RECORD, THE ACTUAL RECORDS
15 THAT WERE ATTACHED TO, I THINK, 594 AND 595, THE -- WE HAVEN'T
16 HEARD FROM THE CUSTODIAN ABOUT THOSE. AND THERE'S ANOTHER
17 SHEET FROM THE GATE LOGS. IT'S AN EXCEL SHEET WITH
18 INFORMATION TAKEN FROM THEM, AND THAT IS HEARSAY.

19 SO THERE'S THE GATE LOGS THEMSELVES, WHICH IS ONE ISSUE.

20 **THE COURT:** YOU OBJECTED TO THE GATE LOGS. LET'S
21 DEAL WITH THAT FIRST.

22 WHY ARE THEY NOT A BUSINESS RECORD?

23 **MS. NUGENT:** THERE WAS NO FOUNDATION LAID FOR A
24 BUSINESS RECORD.

25 **MR. LAFAYETTE:** THE EMAIL THAT SHE GOT FROM KULDEEP

1 SAYS HERE ARE THE GATE LOGS. I CAN BRING IN A WITNESS TO SAY
2 THIS IS WHAT THEY ARE AND STUFF, BUT I THINK WE ARE JUST
3 WASTING TIME HERE.

4 **THE COURT:** I AGREE. IT'S BECAUSE YOU ALL DIDN'T
5 AGREE TO THINGS IN ADVANCE. WHAT'S GOOD FOR THE GOOSE IS GOOD
6 FOR THE GANDER. YOU DON'T AGREE, THEY DON'T AGREE. YOU'VE
7 GOT TO BRING YOUR WITNESS IN.

8 **MR. LAFAYETTE:** WE WILL BRING HIM IN. THAT'S FINE,
9 YOUR HONOR.

10 **THE COURT:** PEREZ CAN TESTIFY AS TO WHAT HE DID IN
11 THAT SUMMARY BASED UPON THOSE RECORDS I THINK IS ULTIMATELY
12 ADMISSIBLE. I DON'T THINK HE HAS LAID THE FOUNDATION YET, SO
13 YOU ARE STUCK WITH IT.

14 AT THIS POINT I NEED THE DESIGNATIONS OF A, 558, 561, 563,
15 566, AND I NEED THE PLAINTIFF'S AS WELL ON THE ONE THAT I
16 MENTIONED FROM YESTERDAY.

17 **MS. NUGENT:** AND 70A. WE WILL BRING THEM BOTH.

18 THANK YOU.

19 **THE COURT:** YOU KNOW, YOU GUYS KEEP OBJECTING AS MUCH
20 AS YOU ARE, YOU ARE GOING TO PISS OFF THIS JURY. THEY START
21 COUNTING. I'VE HAD PLENTY OF JURORS SAY, AND WHY WERE THEY
22 OBJECTING ALL THE TIME? IT'S LIKE YOU ARE TRYING TO HIDE
23 INFORMATION. SO BE CAUTIOUS ABOUT WHAT YOU'RE DOING.

24 VERDICT FORM; YOU WERE GOING TO GIVE ME YOUR PERSPECTIVE.
25 NOW IS THE TIME.

1 **MS. LYONS:** THANK YOU, YOUR HONOR.

2 ON THE VERDICT FORMS, THE KEY POINTS FOR THE HARASSMENT
3 ARE REALLY THE SUPERVISORY STATUS AND SEVERE AND PERVASIVE.
4 AND WITHOUT THAT I THINK YOU END UP WITH SOMETHING THAT IS NOT
5 SUFFICIENTLY DESCRIPTIVE OF THE FEHA VIOLATION. AND THAT'S
6 WHY WE PREFER -- I APPRECIATE THAT YOU WILL WORK WITH IT AND
7 WORK WITH WHAT WORKS IN YOUR COURTROOM AND WHAT YOUR
8 EXPERIENCE TELLS YOU WILL WORK.

9 THOSE ARE THE THINGS THAT I THINK ARE REALLY THE MORE
10 SIGNIFICANT THINGS TO HAVE IN THAT PARTICULAR VERDICT FORM.

11 **THE COURT:** I UNDERSTAND THE FIRST PIECE. I
12 UNDERSTAND THE ISSUES WITH RESPECT TO SUPERVISORY STATUS. IS
13 THERE SOMETHING ELSE? ARE YOU SAYING THAT THERE ARE TWO
14 ISSUES OR ONE?

15 **MS. LYONS:** THERE ARE TWO. THERE IS -- TO THE EXTENT
16 THAT YOU WOULD SIMPLIFY THE LANGUAGE, I WOULD ENCOURAGE YOU TO
17 LEAVE IN SEVERE AND PERSUASIVE WHICH IS THE PRESENT CALIFORNIA
18 STANDARD NOTWITHSTANDING LEGISLATIVE CHANGES TAKING EFFECT
19 JANUARY 1.

20 FOR THE SUPERVISORY STATUS, BECAUSE THERE ARE SO MANY
21 ACTORS HERE, THERE IS A NEED FOR PLAINTIFF TO, RATHER THAN
22 USING THE BUZZ WORDS "SUPERVISORY", TO ESTABLISH SUPERVISORY
23 STATUS UNDER THE STANDARD THAT IS SET FORTH IN THE APPLICABLE
24 JURY INSTRUCTION.

25 **THE COURT:** ISN'T SEVERE AND PERSUASIVE ONE OF THE

1 ELEMENTS?

2 **MS. LYONS:** YES.

3 **THE COURT:** THEN WHY WOULD I SINGLE OUT ONE ELEMENT
4 OVER SOMETHING ELSE?

5 **MS. LYONS:** IT STRIKES ME THAT THAT IS -- THERE ARE
6 TWO TERMS OF ART --

7 **THE COURT:** THERE ARE MANY TERMS OF ART. I HAVE
8 DEFINED AT LEAST HALF A DOZEN, IF NOT MORE, IN THESE JURY
9 INSTRUCTIONS. SO THERE ARE MANY TERMS OF ART.

10 **MS. LYONS:** OKAY. THE TWO -- THAT IS -- YOUR HONOR,
11 IT'S GOING TO BE YOUR CALL. THAT'S SIMPLY OUR POSITION.

12 **THE COURT:** I'M TRYING TO UNDERSTAND IF THERE IS ANY
13 LEGAL REASON TO DO IT, TO SEPARATE OUT ONE ELEMENT OUT OF THE
14 30 ELEMENTS THEY HAVE TO LOOK AT.

15 **MS. LYONS:** THERE AREN'T QUITE 30 FOR HARASSMENT.

16 **THE COURT:** NO? FOR SIX DIFFERENT CLAIMS, EACH CLAIM
17 HAS FIVE TO SIX ELEMENTS APIECE IF NOT MORE, MANY OF WHICH ARE
18 DEFINED TERMS. SOMETIMES THERE ARE, IN FACT, LEGAL REASONS TO
19 HAVE A JURY ANSWER AN INTERROGATORY.

20 IS THERE ANY LEGAL REASON THAT YOU KNOW OF TO HAVE THEM
21 ANSWER AN INTERROGATORY ON SEVERE AND PERSUASIVE?

22 **MS. LYONS:** NOT THAT I CAN CITE TO, YOUR HONOR, AT
23 THIS MOMENT.

24 **THE COURT:** ALL RIGHT. ANYTHING FROM THE PLAINTIFFS?

25 **MS. SMALLETS:** JUST TWO MINOR THINGS. ONE, IT'S

1 SEVERE OR PERVASIVE, NOT AND.

2 SECONDLY, OUR CONCERN WOULD BE IF THAT'S THE ONLY ELEMENT
3 MENTIONED, IT WOULD PUT UNDUE WEIGHT ON IT.

4 AND AS FOR THE SUPERVISOR ISSUE, SHELL IS THE DEFENDANT.
5 THE LIABILITY IS BASED UPON THE CONDUCT OF SHELL AS A WHOLE.

6 **THE COURT:** YES, BUT YOU HAVE TO HAVE SUPERVISORS.
7 THEY ARE NOT LIABLE FOR JUST ANYTHING AND EVERYTHING THAT
8 EVERYBODY DOES.

9 **MS. SMALLETS:** THEY ARE LIABLE FOR ANYTHING AND
10 EVERYONE DOES IF THEY EITHER KNEW ABOUT IT OR SHOULD HAVE
11 KNOWN ABOUT IT.

12 **THE COURT:** IT DEPENDS ON WHO IT IS.

13 **MS. SMALLETS:** YES.

14 **THE COURT:** SO YOU CAN'T THROW IT UP ALL AGAINST THE
15 WALL, YOU ACTUALLY HAVE TO TRACK IT.

16 ALL RIGHT. THE OTHER QUESTION THAT I HAVE IS THERE IS A
17 SIXTH CLAIM IN THE COMPLAINT, A CLAIM WITH RESPECT TO PUBLIC
18 POLICY.

19 **MS. SMALLETS:** YOUR HONOR, WE ARE NOT PURSUING THAT
20 AT THIS TIME.

21 **THE COURT:** I DON'T HAVE A DISMISSAL.

22 **MS. SMALLETS:** OKAY. WE CAN DO THAT.

23 **THE COURT:** SO ARE YOU DISMISSING THAT?

24 **MS. SMALLETS:** YEAH.

25 **THE COURT:** ALL RIGHT. I WANT THE DISMISSAL IN

1 WRITING BY TOMORROW MORNING.

2 MS. SMALLETS: OKAY.

3 THE COURT: ANYTHING ELSE YOU WANT TO TALK ABOUT?

4 MS. LYONS: NOT HERE, YOUR HONOR. THANK YOU.

5 MS. SMALLETS: NO.

6 THE COURT: WE WILL STAND IN RECESS UNTIL 8:00 A.M.
7 TOMORROW.

8 MS. LYONS: THANK YOU.

9 (PROCEEDINGS CONCLUDED AT 1:41 P.M.)

10
11 **CERTIFICATE OF REPORTER**

12 I, DIANE E. SKILLMAN, OFFICIAL REPORTER FOR THE
13 UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY
14 CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE
15 RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

16
17 

18 DIANE E. SKILLMAN, CSR 4909, RPR, FCRR

19 WEDNESDAY, DECEMBER 12, 2018
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